

Third United Nations Conference on the Law of the Sea

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53rd meeting of the Second Committee

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régime of the exclusive economic zone. With regard to the last-mentioned question, the negotiating group which had already reached a compromise solution at previous sessions could simply be re-established. On the other hand, his delegation considered that the issue of straits used for international navigation had received sufficient consideration and there was no need to set up a negotiating group to discuss it. Moreover part III of the composite negotiating text, which dealt with that issue, had established a delicate balance. It could be amended only slightly, and only by the Committee itself.

28. Mr. RUIVO (Portugal) said that the work should be concentrated on a small number of key problems rather than on a multitude of issues. First, therefore, an attempt should be made to set up a working group to consider the question of the right of access to the sea for land-locked countries.

29. However, if it were decided to add more issues to the list of those requiring further examination, his delegation thought that the Committee should revert to the articles on conservation of living resources, which needed to be updated.

30. Mr. ATBIGA (Libyan Arab Jamahiriya) proposed that working groups should be set up to study the régime of islands and the question of enclosed or semi-enclosed seas. He wholeheartedly supported the Egyptian proposal concerning international straits.

31. The CHAIRMAN suggested that, in view of the preceding discussions, the various groups should hold further consultations with a view to determining the order of priorities for the issues to be discussed and the procedures for considering them. He advised delegations to devote the afternoon to consultations for that purpose. It was highly desirable that the work should be organized rationally in view of the limited time available to the Committee, and also in order to enable delegations to attend meetings of working groups and negotiating groups set up by the plenary on questions within the competence of the Committee. To facilitate matters, he requested delegations which had similar views to submit a written statement of their position by the beginning of the following week, indicating their preference as to the issues to be considered and the manner in which they should be dealt with.

32. Mr. ZULETA (Special Representative of the Secretary-General) said that the secretariat was intending to circulate its report on the definition of the outer limits of the continental shelf (A/CONF.62/C.2/L.98 and Add.1) on the morning of the following Wednesday in limited quantities only; one copy would be available for each delegation. More copies of the document would be circulated later for Governments and their experts.

The meeting rose at 1.10 p.m.

53rd meeting

Monday, 17 April 1978, at 11 a.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Organization of work

1. Mr. TAHINDRO (Madagascar) said that he thought that two separate working groups should be set up, one on the régime of islands and the other on enclosed or semi-enclosed seas.

2. Mr. CALERO RODRIGUES (Brazil) observed that although the Conference had decided to give priority to the hard-core issues listed in recommendation 5 in document A/CONF.62/62, it had also decided in recommendation 1 to discuss and resolve all other issues which remained outstanding. The fact that the Conference was short of time did not necessarily require it to deal only with the most difficult issues and leave aside the others. Several delegations had stressed the importance they attached to certain issues which did not appear in recommendations 5 and 6. A number of negotiating groups should therefore be set up to consider those issues, which would then be examined by the Committee before it reported to the plenary.

3. In his opinion, the question of the exclusive economic zone should be given further consideration, since the present text of article 58 of the informal composite negotiating text¹ which dealt with the rights and duties of other States in the exclusive economic zone did not make it clear that military activities such as manoeuvres with the use of weapons and explosives should not be carried out in the zone without the consent of the coastal State. An unambiguous provision to that effect should be added to the present text of article 58.

4. Also, the existing text of article 60, read in conjunction

with article 80, did not make it clear that the coastal State had the exclusive right to construct and to authorize and regulate the construction, operation and use of all artificial islands, installations and structures in the exclusive economic zone and on the continental shelf. Article 60, paragraph 1, should therefore be amended to make that understanding perfectly clear.

5. Finally, article 73 as presently drafted, referred expressly only to the enforcement powers of the coastal State with regard to its rights pertaining to the living resources of the exclusive economic zone. It was his delegation's understanding that the article was intended to relate to the enforcement powers of the coastal State with regard to all the rights referred to in article 56. It would therefore seem necessary to introduce an appropriate amendment to article 73, paragraph 1.

6. The Committee should therefore set up two or three negotiating groups to examine issues which delegations considered particularly important, and should then review successively the various issues mentioned in document A/CONF.62/62, as the representative of Peru had proposed.

7. Mr. BAYONNE (Congo) said that he regarded the informal composite negotiating text prepared in New York in 1977 as a sound basis for negotiation, but thought that some additions should be made to the text and that negotiations should be resumed on certain controversial issues referred to in document A/CONF.62/62. In particular the legal régime of the exclusive economic zone should be reconsidered; and, more specifically, article 73 relating to the enforcement of laws and regulations of the coastal State should be amended as the representative of Brazil had proposed, in line with the provisions of article 56. The prerogatives of coastal States in

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VIII (United Nations publication, Sales No. E.78.V.4).

regard to the protection of the marine environment should also be reconsidered, in order to prevent disasters such as that which had recently occurred on the French coast. He was aware that that question was already being considered in other fora, but he thought it was essential, during the elaboration of the general principles of the convention, to revise the relevant articles of the composite negotiating text in order to strengthen the prerogatives of coastal States in regard to the protection of the marine environment. He therefore agreed with all delegations which had suggested strengthening those provisions.

8. Mr. ROBLEH (Somalia) said that he entirely agreed with the Chairman's interpretation of recommendation 6 and considered that the Committee should take up issues other than those specifically mentioned in that recommendation. His delegation had always been greatly interested in the issues of innocent passage in the territorial sea and of straits used for international navigation. Those issues were particularly important economically as well as from the strategic point of view; and the recent disaster to the *Amoco Cadiz* had highlighted their significance. His delegation believed that the question of straits, in particular, had not received sufficient consideration and should be included among the issues to be added to recommendation 6, because the provisions of the composite negotiating text on that issue did not establish a desirable balance between the interests of coastal States and those of States using straits.

9. He reserved the right to revert to the question of the exclusive economic zone at a later stage and wished, in that connexion, to associate himself with the remarks of the representatives of Brazil and the Congo concerning articles 56, 58 and 60 of the composite negotiating text. Article 56 and article 58, paragraph 2, seemed to him to be particularly open to criticism since, according to them, the exclusive economic zone would be part of the high seas.

10. Mr. IBÁÑEZ (Spain) observed that the basic principle by which the Conference should be guided in its work was stated in recommendation 1, and that the other recommendations merely developed that principle and indicated how it should be applied. For example, recommendation 5 indicated the procedure for dealing with hard-core issues, while recommendation 2 outlined the procedure for considering other issues. Recommendation 6 enlarged on recommendation 2 and mentioned three issues among the other issues to be considered, but made it clear that the list "is not exhaustive and does not imply any degree of urgency or priority." It was therefore an open list, to which the Committee was free to make additions by establishing an inventory of issues that were still outstanding. Once that inventory had been established, the Committee should, in accordance with recommendation 2, discuss each issue and decide whether it was necessary to appoint a negotiating group before reporting to the Conference in plenary.

11. He agreed with the representative of Peru that all the issues mentioned in document A/CONF.62/62 should be examined systematically in the order in which they appeared in the document. In each case the Committee should ask itself whether the issue had received sufficient consideration and could immediately be referred to the plenary, or whether a negotiating group should be appointed to consider it further. That first stage would amount to a consideration on first reading, from which a consensus might possibly emerge.

12. Particular consideration should be given to the question of innocent passage in the territorial sea, whose importance had recently been highlighted by the *Amoco Cadiz* disaster which had aroused deep concern in the international community. In his opinion, article 21, paragraph 2, of the negotiating text which stated that the laws and regulations of a coastal State "shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving

effect to generally accepted international rules or standards" was incompatible with article 212, paragraph 2. The Spanish delegation had submitted an amendment to article 21, paragraph 2, and would like that amendment to be discussed.

13. On the question of straits, his delegation agreed with the Ukrainian delegation (52nd meeting) that it had always been a key issue and had already been discussed at length by the Conference. Unlike the Ukrainian delegation, however, he believed that the issue should be the subject of fresh negotiations, because the relevant articles of the composite negotiating text reflected the views of one group of States and were the outcome of negotiations in which a number of States that were directly concerned, such as Spain, had not participated. The issue of straits had not received sufficient consideration and no consensus had been reached on it, since the negotiating group appointed to examine it had held only three meetings, had made only a general study of the question, and had not engaged in any genuine negotiations. He considered therefore that that issue required more detailed study and he reserved the right to revert to the matter later.

14. Mr. SHARMA (Nepal) said he fully supported the proposal by Afghanistan and Uganda (*ibid.*) that the right of access of land-locked States to and from the sea and freedom of transit should be added to the list of issues in recommendation 6.

15. Mr. HAMMA (Niger) said that in his view the list in recommendation 6 was not restrictive, and that every issue which delegations considered to be vital must be examined by some organ of the Conference. He agreed with the representatives of Nepal, Uganda and Afghanistan that the right of access of land-locked States to and from the sea and freedom of transit was an important issue which had not received sufficient consideration and which merited further study.

16. Mr. MUTUKWA (Zambia) said that he also felt that the question of the right of access of land-locked States to and from the sea and freedom of transit had not received sufficient consideration; he supported the proposal by the representative of Afghanistan that it should be examined by a group comprising the countries directly concerned. The question of the specific legal régime of the exclusive economic zone also deserved further consideration; he left it to the Chairman to determine the best procedure for considering it.

17. Mr. YOLGA (Turkey) remarked that, while the régime of islands and the question of enclosed and semi-enclosed seas, which were mentioned in recommendation 6, had both been widely discussed, the Conference had not yet reached any final conclusion on either of them. Both issues were extremely important, because they affected the interests of island States, archipelagic States, and States which had islands in the economic zone or on the continental shelf of other States. They were also very sensitive questions since, as a rule, the States affected had different points of view. Two negotiating groups should therefore be appointed to consider them before they were submitted to the plenary.

18. Mr. CLINGAN (United States of America) said he believed that most of the issues that had previously been before the Committee had been fully discussed and that an effort must now be made, without any further loss of time, to settle the key issues still outstanding. Consideration of other, less important questions—which had already been widely discussed—or the referral of such questions to negotiating groups, as some delegations wished, would further delay the work of the Conference and definitely compromise its outcome. He was therefore strongly opposed to the establishment of negotiating groups for issues other than the hard-core issues listed in recommendation 5. The question of straits, in particular, had been fully debated, and he urged delegations to leave aside that question and other such

points, so that the Committee could in the little time remaining proceed with its work on the hard-core issues.

19. Mr. ARIAS SCHREIBER (Peru) said he feared that the procedural discussion might continue interminably. Accordingly, he reiterated the proposal he had made at the previous meeting that the Committee should take up the various parts of the informal composite negotiating text which came within its competence, with the exception of those which had been referred to a negotiating group, and should consider them in the order in which they appeared in the text. His delegation agreed that priority should be given to consideration of the outstanding hard-core issues, but it also felt that the Committee must look at the composite text as a whole, so that it could be revised as appropriate. He suggested that, in the nine days remaining for the completion of its task, the Committee—and also an *ad hoc* group on the question of the right of access of land-locked States and geographically disadvantaged States to the living resources of the economic zone—should meet once a day. That would enable even small delegations to participate in all the meetings. The Committee might take up in turn the following questions: territorial sea and contiguous zone; straits used for international navigation; archipelagic States; exclusive economic zone; continental shelf; high seas; régime of islands; enclosed or semi-enclosed seas; and right of access of land-locked States to and from the sea and freedom of transit.

20. Mr. MULONGANDUSU ESUK (Zaire) said he did not feel that the right of access of land-locked States to and from the sea and freedom of transit had received sufficient consideration. As the representative of Uruguay had rightly pointed out (*ibid.*), the situation had changed considerably since the last session of the Conference, and the informal composite negotiating text needed to be revised. His delegation also thought that the status of geographically disadvantaged States should be more precisely defined.

21. Mr. STAVROPOULOS (Greece) supported the suggestion made by several delegations for continuing the negotiations on the question of straits. The régime of islands, on the other hand, was a question which had already been fully discussed, and no special negotiating group was needed to consider that issue, or the question of enclosed and semi-enclosed seas. If delegations wished to submit proposals on those two topics, they could do so during the consideration of other, more urgent issues.

22. Mr. OUZOUNOV (Bulgaria) recalled that, for two of the issues coming within the competence of the Second Committee (recommendation 5, items (4) and (7)), the plenary had already decided to set up negotiating groups. In addition, the study requested of the secretariat in connexion with item (6) of the same recommendation would be ready in two days' time, thus making it possible to establish a further negotiating group. The fact that there would then be three such groups might create problems for the many delegations with a membership of three or less. In the circumstances, his delegation wondered whether it would be advisable to establish a further negotiating group on the question of straits, as a number of delegations had proposed. That question was indeed a very important one, but it had already been studied in depth at previous sessions and a compromise formula reconciling the interests of all parties had long been applied. It would be better for the Committee to concentrate its efforts on the outstanding hard-core issues.

23. Mr. LUKAŠIK (Poland) said that there was general agreement on the identification of the outstanding core issues and on the establishment of appropriate negotiating groups. Those groups should start work as quickly as possible and the Committee should refrain from establishing any more. Although his delegation was interested in other issues, it preferred to concentrate its attention on outstanding hard-

core issues, and it invited other delegations to adopt the same approach in order to save time and facilitate a compromise.

24. Mr. POP (Romania) considered that the régime of islands and the question of enclosed and semi-enclosed seas should be considered in greater depth by the Committee, possibly in two specially appointed negotiating groups. Every effort should be made to arrive at a consensus on those two issues of crucial importance.

25. Mr. ROSENNE (Israel) said that like other delegations, but for different reasons, his delegation was not satisfied with the provisions of the informal composite negotiating text relating to straits used for international navigation. It failed to take into account the legitimate requirements of States compelled by geography to have recourse to straits and other narrow sea outlets and was therefore not a reasonable compromise. It was not perhaps the most appropriate time to reopen the debate on the implications of the negotiating text on freedom of navigation and overflight of straits; but he hoped that if a new working group or negotiating body were established to continue the consideration of that issue, it would be open to full participation by all interested delegations. His delegation had other difficulties with the informal composite negotiating text; however, in order to save time, the Committee should concentrate on the issues identified in document A/CONF.62/62 on the organization of work.

26. Mr. STARČEVIĆ (Yugoslavia) said that, in the interests of efficiency, he supported the Brazilian representative's suggestion that negotiating groups should be set up to consider primarily the issues referred to in recommendation 6 and that other issues mentioned by delegations should be dealt with at informal meetings of the Committee.

27. Mr. DARWIN (United Kingdom) said it would be regrettable if a multiplicity of negotiating groups were appointed to consider a large number of issues, and if delegations continued to make new proposals at the risk of jeopardizing the balance of certain articles and undermining the results achieved at previous sessions. For the hard-core issues, the Conference had already decided to appoint negotiating groups; but such a procedure should be avoided for other issues. Naturally, delegations should be heard, but the chief aim should be to see whether there was a real prospect of reaching a consensus. On certain points—such as the régime of islands, enclosed and semi-enclosed seas, straits and freedom of transit for land-locked States—the provisions of the informal composite negotiating text were the outcome of long discussion and many proposals, and it would be a pity if they were now referred to another negotiating group. Delegations should rather give them broad endorsement, in a spirit of compromise.

28. Mr. MAWHINNEY (Canada) advocated further study of the provisions of the negotiating text concerning vessel source pollution of the seas, particularly the provisions appearing in part II of the negotiating text relating to innocent passage and the standard-making powers in the territorial sea of a coastal State, and the obvious interrelationship of those provisions with corresponding articles in part XII of the text. Since the Third Committee had always dealt with protection and preservation of the marine environment, i.e., part XII of the text, it should continue to study all aspects of the question in detail. The Chairman of the Second Committee might consult the Chairman of the Third Committee on that matter, in order to avoid any unnecessary duplication by those two organs of the Conference.

29. Mr. KRAL (Czechoslovakia) said that, as the representative of a land-locked State, he was not entirely satisfied either with part X of the negotiating text, relating to the right of access of land-locked States to and from the sea and freedom of transit, or with part III, relating to straits used for international navigation. However, it would be pointless to reopen the debate on those issues. His delegation fully

shared the desire expressed by many delegations to avoid a multiplicity of negotiating groups and to pass on as quickly as possible to the substance of the issues listed in recommendation 5 of the General Committee, which had been endorsed by the Conference.

30. Mr. KIBRIA (Bangladesh) said that consideration should be given to the important issue of the baseline, either in the plenary or in the Second Committee. He therefore requested that the issue should be included as item (iv) in recommendation 6 and proposed that it should be considered at an appropriate time.

31. Mr. ZEHENTNER (Federal Republic of Germany) said that he thought the Committee should adhere to the order of priority indicated in the programme of work established by the plenary. For that reason, he supported any proposal to concentrate the work on the key issues outstanding.

32. Mr. SHEN WEI-LIANG (China) said that work should be concentrated on issues of common interest, without however neglecting issues of special interest to the developing countries. For example, the questions of international navigation, the exclusive economic zone, the régime of islands and enclosed or semi-enclosed seas might be re-examined. In particular, further consultations should be held on article 58 (Rights and duties of other States in the exclusive economic zone) and article 17 (Right of innocent passage). The procedures for such consultations either in the Committee or in a negotiating group, should not be such as to impose any undue burdens on small delegations.

33. Mr. ZELAYA UBEDA (Nicaragua) expressed the hope that one negotiating group would be appointed for the régime of islands and another for enclosed or semi-enclosed seas. The provisions relating to those issues, and particularly articles 6, 7, 13, 47, 60, 80 and 121, might be contrary to the principle of equity enunciated in article 74 (Delimitation of

the exclusive economic zone between adjacent or opposite States) and article 83 (Delimitation of the continental shelf between adjacent or opposite States). Though he agreed that it was desirable to move ahead with the work during the present session, he warned the Committee that excessive haste in dealing exclusively with the major outstanding issues might be detrimental to the interests of countries which had more limited problems. In that connexion, he was in favour of the procedure proposed by Peru, on the understanding that no attempt would be made to reopen questions that had already been settled or to prematurely submit official amendments to the negotiating text.

34. Mr. ZHIGALOV (Union of Soviet Socialist Republics) said that it would be quite pointless to go through the negotiating text from beginning to end, as some delegations had proposed. On the contrary, it was essential to abide by the recommendations of the plenary, in other words, to consider outstanding hard-core issues and to appoint negotiating groups to examine issues which had not been considered in depth by the committees. The question of straits used for international navigation was admittedly a sensitive problem, but it had been discussed at length and the compromise solution reached on that issue should not now be reconsidered. Similarly, the question of the exclusive economic zone had been dealt with in depth at the previous session, and there was no reason to appoint a negotiating group to consider it. No one wished to reject certain issues outright on the grounds that they were of interest only to a small number of countries; on the contrary, such issues must be considered, but in small committees which could make proposals to the Chairman of the Second Committee.

35. His delegation would support any working method that would enable the Committee to get to the heart of the issues before it.

The meeting rose at 1.10 p.m.

54th meeting

Monday, 17 April 1978, at 3.35 p.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Organization of work

1. Mr. PARAISO (France) said that, in order to obtain positive results on the few issues that had not yet received a satisfactory solution, the Committee must above all observe the priorities and the basic timetable that had been drawn up by the Conference in plenary (see A/CONF.62/62). The French delegation could not therefore accept the principle of a complete revision of the informal composite negotiating text.¹ Secondly, the Committee should refrain from reopening discussions on questions which had already been examined at length and for which the negotiating text proposed solutions that were widely acceptable, such as the question of straits used for international navigation. France was opposed to the establishment of a negotiating group on that issue—a step which might jeopardize the very large measure of agreement and the delicate balance that had been achieved.

2. However, the French delegation, which was particularly sensitive to pollution problems after the ecological disaster

caused by the wrecking of the *Amoco Cadiz*, considered that certain amendments to the negotiating text were necessary to provide coastal States and the international community with an effective legal framework for eliminating the possibility of such accidents and taking preventive and corrective action as suggested at the previous meeting by the representative of Canada. However, the French delegation believed that those issues should be discussed first in the third Committee.

3. Mr. VALENCIA-RODRÍGUEZ (Ecuador) wished to stress the importance which his delegation attached to recommendations 1, 2 and 6 in document A/CONF.62/62. With regard to recommendation 6 his delegation thought that the following issues should be included in addition to those already mentioned: peaceful uses of ocean space, the question of archipelagos which were not States, the safeguard clause for the protection of the rights of States in territorial seas extending beyond 12 miles and the question of straits used for international navigation. The Second Committee was competent to deal with the last three of those issues. In examining questions which affected the vital interests of a number of countries, it was essential to take into account their political aspects. Countries could not support a consensus if their interests were ignored, if their positions were not respected, or if the consideration of certain issues which had not re-

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VIII (United Nations publication, Sales No. E.78.V.4).