

Third United Nations Conference on the Law of the Sea

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A/CONF.62/L.31

Memorandum by the President of the Conference

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume IX (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Seventh and Resumed Seventh Session)*

3. Invites the executive heads of the specialized agencies and other United Nations organizations with competence in ocean affairs:

(a) To bring to the attention of the governing bodies of their respective organizations any matter regarding structures, functions and programmes which may need to be considered in order to facilitate the implementation of the Convention;

(b) To take appropriate measures within their sphere of competence to improve interagency co-ordinating mechanisms with particular regard to the need for rationalizing the discharge of the functions of the international organizations;

(c) To co-operate with the Secretary-General of the United Nations in the up-dating of the "Annotated directory of intergovernmental organizations concerned with ocean affairs" and in servicing the *ad hoc* study group of eminent persons.

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Memorandum by the President of the Conference

[Original: English]

[30 June 1978]

1. The Special Representative of the Secretary-General has, under cover of his memorandum of 23 June 1978 addressed to the President and the members of the General Committee of the Third United Nations Conference on the Law of the Sea, sent a copy of a memorandum of 21 June 1978 to him by Mr. Bohdan Lewandowsky, Under-Secretary-General for Conference Services, which is annexed.

2. In his memorandum, the Under-Secretary-General, Department of Conference Services, has referred to the aggregate servicing requirements of the resumed session of the Conference on the Law of the Sea and the Committee established under General Assembly resolution 32/174.

3. The Special Representative has pointed out that facilities will be severely restricted, especially during the second part of the resumed session, from 5 to 15 September, and that a rigid time-table to which the Conference should adhere strictly would provide the only practical solution.

4. The proposals set forth here are intended to assist the members of the General Committee and other participants in the formulation of their suggestions regarding the organization of our work. The resumed session should be seen as a continuation of the work done during the first part of the seventh session and for that reason the scheme of organization might, as far as possible, be retained intact.

5. The reports of the committees and the negotiating groups on negotiations at the seventh session during the period 28 March to 19 May 1978 show clearly that very substantial progress was achieved, if progress is understood to mean more detailed examination of problems and an indication of the possible compromise solution that would lead to eventual agreement.

6. Negotiating groups 1, 2 and 3, which deal with matters falling within the First Committee's mandate, would require special attention. One of the signal achievements during the first part of the seventh session was the detailed examination by groups of experts of extremely complex technical problems which had previously been discussed only in general terms and mainly in their political context.

The questions examined by experts were:

(a) The technical problems involved in regard to production limitation dealt with in reports of the subgroup of technical experts of negotiating group 1, appearing as annexes B, C and D to the explanatory memorandum of the Chairman (of negotiating group 1) concerning document NG1/10/Rev.1,⁶ also numbered as documents NG1/7, NG1/9 and NG1/11;

(b) The technical problems relating to financial arrangements dealt with by negotiating group 2, which was appointed by the First Committee. This negotiating group examined three items:

- (i) The financial arrangements of the Authority;
- (ii) The financial arrangements of the Enterprise;
- (iii) The financial terms of contracts for exploration and exploitation.

7. The results of the work of negotiating group 2 have been comprehensively covered in the report of the Chairman of that negotiating group to the First Committee, contained in document NG2/9⁷ and its annexes—annex A on the financial arrangements of the Authority (NG2/4), annex B on the financial arrangements of the Enterprise (NG2/5) and annex C on the financial terms of contracts (NG2/7), which is divided into three parts, namely, the Chairman's suggested compromise proposals, the Chairman's explanatory memorandum on document NG2/7, and explanatory notes on the technical terminology.

8. The Chairman of negotiating group 1 has stated that his revised suggested compromise formula contained in document NG1/10/Rev.1 is "an attempt to incorporate in the text formulas which... may bring the Conference closer to solutions more acceptable than those previously proposed for dealing with the complex problem of the system of exploitation of the area and its resources". During the resumed session, further negotiations on this revised formula should be undertaken. The valuable work done by the subgroup of technical experts on the production limitation formula should also be carried further forward as production limitation is central to the question of exploitation.

9. Three other problems that should receive attention are the terms on which the Enterprise would function, the selection of applicants for contracts for exploitation and certain aspects of the settlement of disputes relating to matters germane to the system of exploration and exploitation.

10. The compromise proposals suggested by the Chairman of negotiating group 2 on the financial arrangements of the Authority and on the financial arrangements of the Enterprise are contained in documents NG2/4 and 5 respectively. For lack of time the Chairman of negotiating group 2 was unable to complete his group's negotiations on the financial terms of contracts for exploration and exploitation.

11. The compromise proposals contained in documents NG2/4 and 5, as well as the outstanding issues on financial terms of contracts referred to by the Chairman of negotiating group 2 in his report to the First Committee, should also be

⁶*Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 19.

⁷*Ibid.*, p. 52.

further considered at the resumption of the session as they are themselves central to the system of exploration and exploitation.

12. The third hard-core issue concerning the First Committee is "Organs of the Authority, their composition, powers and functions". Negotiating group 3, under the chairmanship of the Chairman of the First Committee, was set up to negotiate these problems. The work of negotiating group 3 should receive the same priority as that of negotiating groups 1 and 2. They are interrelated and to deal with any one of them in isolation from the others would not be conducive towards agreement. Further negotiations in negotiating groups 1, 2 and 3 should be conducted until they reach the point when it would be appropriate to consider them as a single entity. Progress in negotiating group 3 would depend very much on the results of the negotiations in negotiating groups 1 and 2. If substantial agreement is reached in each group, the collective consideration of the results achieved by them should simplify our task so far as the First Committee is concerned.

13. Facilities must be provided for all subgroups of experts dealing with the problems referred to negotiating groups 1 and 2 to continue their useful work. It would be for the Chairman of the First Committee to determine, at his discretion, whether a small, compact and representative subgroup might be established to expedite the work entrusted to negotiating group 3.

14. The other item to which special attention should be given when the seventh session resumes is that assigned to negotiating group 6, namely, "Definition of the outer limits of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles. Definition of the outer limits of the continental shelf and the question of revenue sharing."

15. This negotiating group is chaired by the Chairman of the Second Committee. The satisfactory solution of this problem should leave the Conference in a very favourable position regarding the items allocated to the Second Committee as a whole and would contribute effectively to a solution of such other items as still present difficulties but which have not been listed among the hard-core issues. In this regard, further work within negotiating group 4 might well be suspended until the issues entrusted to negotiating group 6 are settled or until the negotiations within that group reach a stage when it might be appropriate to convene negotiating group 4 so as to enable it to complete its work. The same observation would appear to be relevant in regard to negotiating group 5 where an appreciable degree of progress has been attained.

16. As regards negotiating group 7, which was appointed to deal with the issue entitled "Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon", time permitting and should the Chairman of the negotiating group consider the effort worthwhile, a further attempt might be made to arrive at a compromise.

17. The Chairman of the Third Committee feels that his Committee could usefully resume negotiations on the remaining problems which are listed in his report. The results of the negotiations in the Third Committee as contained in the report to the plenary Conference by the Chairman of the Third Committee⁸ are quite gratifying as the Chairman has indicated that on certain provisions a consensus was reached. There are two other categories of issues which he has described as "Provisions emerging from intensive negotiations resulting in compromise formulae with a substantial degree of support as to provide a reasonable prospect for a consensus, but on which no consensus was reached, since

there are still some reservations and objections" and "Informal proposals... on which, owing to lack of time or divided views, no compromise formulae emerged". These two categories should be submitted to further negotiations during the resumed session. As regards paragraph 2(d) of section I of the report to the plenary Conference by the Chairman of the Third Committee, Mr. A. Yankov (Bulgaria), relating to provisions of the informal composite negotiating text which were not challenged and on which no proposals were made for substantive modifications, the Conference would do well to accept the Chairman's assumption that they should remain as they stand.

18. Generally speaking, it would be very much in the interest of the smooth and orderly conduct of our work during the resumption of the session and of the efficient use of the time and facilities available if the Conference decided to continue its work from the point it reached on 19 May and to avoid reopening issues on which general agreement or a reasonable degree of agreement has been reached.

19. Extremely contentious issues must be left, though not indefinitely, to the catalytic influence of time, as well as the creation of a more congenial climate of understanding which would result from the attainment of compromise on the hard-core issues on which, as suggested in this memorandum, the Conference should concentrate when it resumes. The final clauses would fall into this category.

20. During the period Monday, 21 August, to Friday, 1 September, more facilities are likely to be available than during the second half of the resumed session. If there is general acceptance of the proposals contained in this memorandum participants would know how to constitute their delegations for the first half of the session. They would need representatives dealing with matters assigned to negotiating groups 1, 2 and 3, in particular experts on production control and on financial arrangements, and on definition of the continental shelf, assigned to negotiating group 6, as well as on the issues which the Chairman of the Third Committee would wish the Conference to consider further.

21. As regards Part XV, Settlement of disputes, the results achieved in negotiating group 5, if matched by progress on the issue referred to negotiating group 7 and on the procedure for settlement of disputes relating to the international sea-bed area, would bring the Conference very close to general agreement on this question.

22. This memorandum seeks merely to suggest the items on which the Conference might with advantage concentrate, having regard to the limited facilities that would be available and the avoidance of inconvenience and unnecessary expense to delegations, and thus leave a small though not insignificant residue of problems to be solved before success is achieved.

23. Sound and constructive co-operation and a readiness to compromise could bring about the happy consummation of a long and strenuous effort.

ANNEX

Memorandum dated 21 June 1978 from the Under-Secretary-General for Conference Services and Special Assignments to the Special Representative of the Secretary-General

1. I have been following with great concern the consultations aimed at accommodating the resumed sessions of the Conference and of the Committee established under General Assembly resolution 32/174, which will overlap in the period 5 to 15 September 1978.

2. Although this Department has actively participated in all stages of finalizing the agreement at the Secretariat level and fully supports it, I am compelled to express to you my serious misgivings at this compromise solution, which would divide the available limited conference room facilities equally between the Conference and the Committee. Experience has taught us that whenever ar-

⁸*Ibid.*, p. 96.

rangements of this kind have been conceived for important conferences or meetings on the Secretariat level, there ensued in reality requests for more meetings than were originally planned.

3. A mere glance at the aggregate servicing requirements of both sessions as submitted by your offices reveals that not even 50 per cent of the desired meetings could be held, given the limited number of available conference rooms and the schedule of other meetings in that period. In view of the indisputable importance to be attached to the work of both the Conference and the Committee, I wonder

whether we can really afford to put both in a *de facto* strait-jacket with no room for additional meetings of regional groups or, eventually, newly established working groups.

4. This Department will not be in a position to commit itself to the provision of services over and above the level of eight meetings a day, four in the morning and four in the afternoon. I would like you to be fully aware of this situation and to inform the Bureau of your body of the situation in detail, in order to avoid any possible acrimony in September.

DOCUMENT A/CONF.62/L.32

Letter dated 11 September 1978 from the representative of the Federal Republic of Germany to the President of the Conference

[Original: English]

[14 September 1978]

You will remember that the heads of delegation of the member States which at that time held the presidency of the Council of the European Communities, in 1976 and 1977, drew your attention to the necessity of allowing the European Economic Community to become a contracting party to the future convention on the law of the sea by including in the text of that convention a particular clause to that effect. The letters, dated 10 September 1976 and 6 June 1977, respectively, have been distributed as official documents of the Conference (A/CONF.62/48¹ and 54^{1a}).

During the debate on the preamble and final clauses of the future convention which took place at the 95th meeting of the Conference on 5 May 1978 at Geneva, Mr. Villadsen, head of the delegation of Denmark, speaking in his capacity as representative of the State, which at that time held the presidency of the Council of the European Communities, recalled and, by specific examples, further explained the reasons why the Community must obtain the right to become a contracting party to the convention due to the competences which have been transferred to the Community by its member States in various areas which will be covered by the convention.

Mr. Villadsen emphasized that it not only would be a logical consequence of the internal distribution of competences between its member States and the Community that it undertakes engagements in certain areas covered by the future Convention, but that it also would respond to the necessity of giving third States which have ratified the convention the legal guarantee that they have before them partners capable of honouring in their regard the totality of obligations envisaged by the convention.

Several delegations commented upon the statement made by the head of the Danish delegation and the Community has with the utmost care considered the comments and remarks which were made.

In the light of these developments and with a view to later deliberations at the Conference concerning the inclusion of provisions in a future convention which would allow the European Economic Community to become a contracting

party to the convention I have, in my capacity as chairman of the delegation of the member State which, during the second half of 1978, holds the presidency of the Council of the European Communities, the honour to transmit to the Conference the text of the clause which we propose in this respect. The clause, which could be inserted in the informal composite negotiating text as new article 299 *bis* and which contains certain additions and modifications compared with the text which has previously been proposed in documents A/CONF.62/48 and 54, is worded as follows:

"1. The present Convention is open for signature and approval or accession by customs unions, communities or other regional economic integration groupings, constituted by sovereign States, which exercise powers in areas covered by the present Convention.

"2. Their instruments of approval or accession shall be deposited with the Secretary-General of the United Nations.

"3. Customs unions, communities or other regional economic integration groupings referred to in paragraph 1 shall, upon deposit of their instruments of approval or accession, become contracting parties with the same rights and obligations as States Parties under the provisions of the Convention to the extent that these rights and obligations relate to an area where powers have been given to them by their member States.

"4. Nothing in the present Convention shall prevent the member States of customs unions, communities or other regional economic integration groupings referred to in paragraph 1 from implementing provisions relating, in accordance with the rules governing such groupings, to the mutual granting to the nationals of such States of national treatment or any other special treatment."

I would be grateful if you could arrange for this letter to be circulated before the end of the current session as an official document of the Conference.

(Signed) R. WOLFF
Head of the delegation of the
Federal Republic of Germany to the
Third United Nations Conference on the
Law of the Sea

¹*Ibid.*, vol. VI (United Nations publication, Sales No. E.77.V.2).

^{1a}*Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3).