

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/SR.93

93rd Plenary meeting

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)*

thanked the President for his efforts to resolve the procedural problems which had beset the Conference and assured him that, for their part, the members of the group were eager to commence substantive work. It was the understanding of the members of the group that, since all the negotiating groups would be open-ended, all their documents would be circulated to all participants in the Conference.

10. If the President permitted, he would make a statement setting out the position of the States he represented on the question of the right of access to the living resources of the exclusive economic zone.

11. The PRESIDENT suggested that it might be more appropriate for that statement to be made in the relevant negotiating group.

12. Mr. TUERK (Austria) accepted the President's suggestion. The text of the statement he intended to make would be circulated to all delegations for information.

13. Mr. KOH (Singapore) requested the secretariat to ensure the circulation to all delegations of the text of all the proposals put forward by States or groups of States in the various negotiating groups.

14. The PRESIDENT said that the secretariat would comply with that request.

15. Mr. BRENNAN (Australia) asked whether it was intended to publish a list of the members of the negotiating groups.

16. The PRESIDENT pointed out that reference would be made to the composition of the negotiating groups in the summary record of the meeting. He would, however, arrange for the circulation of the complete list mentioned by the representative of Australia if the Conference so desired.

It was so decided.

17. Mr. AL-NIMER (Bahrain) observed that all the negotiating groups were to be open-ended and that the President,

in his note of 17 April 1978 to participants in the Conference, had drawn attention to recommendation 3 which stated that any participant not included in the original nucleus would be free to join the groups with the same status as the original members. He therefore assumed and hoped that the proceedings of the groups would be public.

18. The PRESIDENT said that, since the function of the groups was to negotiate, they would have to work in private, unless they decided otherwise.

19. Mr. YOLGA (Turkey), referring to the question of the chairmanship of the negotiating group on item (5), said that it was normal practice to select as chairman of a negotiating group a representative of a State whose interests were not directly affected by, and which did not have a clear position on, the subject of the group's deliberations. With that in mind, his delegation wished to express the hope that, in discharging his duties as chairman of the group in question, Mr. Stavropoulos—for whom it felt only esteem and friendship as a person—would remain strictly impartial and keep the discussion within the limits of the topic assigned to the group.

20. The PRESIDENT said that, while the representative of Turkey was entitled to reassert the principle that the chairmen of negotiating groups should remain impartial, he was sure that that principle had not and would not be violated by the chairman of any of the negotiating groups of the Conference.

21. Mr. ZEGERS (Chile) said that Mr. Stavropoulos' record as Legal Counsel of the United Nations and Special Representative of the Secretary-General to the Conference, and also the general nature of the topic for the negotiating group on item (5), should be sufficient guarantees for any delegation that the proceedings of that group would be conducted with impartiality.

The meeting rose at 11.55 a.m.

93rd meeting

Tuesday, 25 April 1978, at 12.20 p.m.

President: Mr. H. S. AMERASINGHE.

Organization of work

1. The PRESIDENT informed the Conference that the General Committee had met to consider the question of the revision of the tentative time-table set forth in recommendation 12 of document A/CONF.62/62. The proposals he had made to the General Committee were contained in document A/CONF.62/BUR.10. The Rapporteur-General was not mentioned in paragraph 1 of that document, because he had been unable to attend the meeting at which the President, the Chairmen of the committees and the Chairman of the Drafting Committee had discussed the question of the revision of the time-table.

2. The following corrections should be made to the proposals in document A/CONF.62/BUR.10: the beginning of paragraph 2 *b* should be amended to read "Second stage to cover the period 3 to 10 May 1978"; in paragraph 2 *d* the words "consideration of" should be inserted before the words "the revised informal composite negotiating text"; the last part of paragraph 3 should be amended to read "The second stage referred to in paragraph 2 *b* above would, there-

fore, cover the period 3 to 10 May 1978"; and, paragraph 4 should be deleted.

3. He had reminded the General Committee that the Conference had decided to convene the current session on the understanding that it would be the last at which there would be substantive negotiations. The revised time-table had been submitted because it had been found necessary, with that understanding in mind, to amend the tentative time-table contained in recommendation 12. The Conference, he had said, must now decide what its objectives should be for the current session, and how it was to plan its work in order to reach agreement on a final convention. The Conference should not modify its earlier intention of having a revised version of the informal composite negotiating text¹ prepared and, if possible, formalized before the present session adjourned, since that would enable delegations to submit formal amendments in what would be the last stage of the Conference's work. If those amendments were to receive

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).

early and thorough consideration, they should be submitted to the secretariat as soon as possible.

4. He had appealed to all delegations to view the revised time-table as a final indication that they must use their best endeavours to reach a consensus on the hard-core issues, namely: the system of exploration and exploitation of the mineral resources of the international sea-bed area and the resource policy; financial arrangements regarding exploration and exploitation; organs of the Authority, their composition, powers and functions; and the problems that divided the coastal States on the one hand, and the land-locked and geographically disadvantaged States on the other hand, with regard to the living resources of the exclusive economic zone. Those issues were being dealt with by negotiating groups on items (1), (2), (3) and (4) of recommendation 5. Items (5), (6) and (7) of recommendation 5 were equally important, and agreement on them must be reached before the informal composite negotiating text could be revised. In addition, there were the three issues referred to in recommendation 6, the third of which (Preamble and final clauses) was central to the determination of the content of the final convention. He had also suggested, and the General Committee had agreed, that two plenary meetings should be held on 5 May to consider that item. One delegation had suggested that items (i) and (ii) of recommendation 6 should also be considered, but he had suggested that a clear distinction must be drawn between issues that affected the overwhelming majority of participants in the Conference and those that were essentially of a bilateral nature. He fully appreciated that the issues described as being essentially of a bilateral nature were of the utmost importance to the States concerned; but there had to be an order of priority, since all items could not be considered simultaneously.

5. He had said that agreement on the hard-core issues at the present session would substantially enhance the prospects for the settlement, at a subsequent session of the Conference, of issues that were described as being essentially of a bilateral nature. He had told the General Committee that it was incumbent on delegations, if the international community was to be convinced of the seriousness of the Conference's intentions, to arrive at agreement on the hard-core issues. The situation was one of the utmost gravity and all sides must make concessions. The price of success was a balanced compromise, but the price of failure would be bitter conflict.

6. The General Committee had accepted the proposals put forward in document A/CONF.62/BUR.10 on the understanding that the revised time-table would be flexible. It had been stressed, for instance, that the negotiating groups on items (1), (2) and (3) would need more time than they had been allowed in the revised time-table.

7. It had also been agreed that the Drafting Committee should be requested to commence work by addressing itself to the provisions of the informal composite negotiating text that appeared to be settled and to recommend changes that were considered necessary from a technical and drafting point of view, particularly the adoption of a uniform terminology.

8. If there were no objections, he would take it that the plenary too approved the revised time-table contained in document A/CONF.62/BUR.10.

The revised time-table was approved.

9. Mr. WARIOBA (United Republic of Tanzania) said that the time allowed to the negotiating group must be extended, not because substantive negotiations were taking place in those groups but because the stage when negotiations could be moved from the groups to the committees and the plenary meetings had not yet been reached.

10. His delegation accepted the revised time-table but did not believe that, even with the proposed adjustments, the Conference would achieve what it had set out to achieve. The negotiating groups were not negotiating; they were engaged in speech-making. The Conference should reconsider its attitude to negotiations. The stage had been reached at which a few crucial issues must be resolved. What was necessary, therefore, was that the total leadership of the Conference—the President, the Chairmen of the committees and the leaders of delegations—should devote all their attention to those issues. Yet very few leaders were attending the meetings of the negotiating groups. The leadership of the Conference had not lent its weight to endeavours to solve the problems facing the Conference. By accepting the revised time-table, delegations had merely postponed the issue. The current session was crucial, because what it accomplished would determine the fate of the Conference. Perhaps delegations should ask themselves whether time was the only factor impeding the settlement of difficulties. The revised time-table must be accompanied by the determination of the leadership to come to grips with the problems facing the Conference.

11. With those comments, his delegation accepted the revised time-table, but had reservations as to its implications.

12. The PRESIDENT reiterated his appeal to all delegations to negotiate seriously. As the representative of the United Republic of Tanzania had suggested, the will to succeed was lacking.

13. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that his delegation accepted the revised time-table, which was more realistic than that suggested in document A/CONF.62/62.

14. All delegations should endeavour to reach a consensus on the issues facing the Conference. To that end, they should work together in a spirit of compromise and adopt a flexible attitude to the questions under negotiation. Unfortunately, the attitude of some Powers had recently been far from flexible; they had insisted on maintaining their own positions while requiring other countries to modify theirs. Not all issues were properly treated in the informal composite negotiating text; until that situation was remedied, the Conference would not succeed. It should be noted that there could be a radical change in the position of certain delegations if issues they regarded as vital were treated in a positive manner by other delegations.

15. The PRESIDENT suggested that it was not for the plenary to allocate praise to certain delegations and blame to others.

16. Mr. LUPINACCI (Uruguay) said that his delegation had some doubts concerning the practicability of the revised time-table but considered that time limits should be established.

17. He asked how, under the revised time-table, the procedure envisaged in recommendation 4 would be carried out.

18. The PRESIDENT suggested that negotiating groups established by the plenary would inform the chairman of the committee concerned and the President of the Conference of the results of their negotiations, and the President would consult the chairman of the committee before raising the matter in plenary. A group established by a committee would submit its report to that committee. The question of timing was very delicate; it would be necessary to "play it by ear".

Rule 65 of the rules of procedure

19. The PRESIDENT read out rule 65 of the rules of procedure. In the past, he observed, the specialized agencies and other intergovernmental organizations had conveyed their informal views on the informal texts either directly to the chairman of the committee concerned or through the secre-

tariat. They had always been kept informed by the secretariat of developments in informal negotiations that might be relevant to their work.

20. Some of the agencies had suggested that they would like to make formal submissions in writing with regard to possible amendments to the informal composite negotiating text. The Conference had hitherto adhered strictly to the rule that no formal proposals for amending the informal texts could be circulated as formal Conference documents. Delegations had imposed upon themselves that limitation, taking into account the fact that the negotiating texts were informal in character, only provided a basis for negotiation and must not be regarded as prejudicing the position of any delegation. In his opinion, therefore, it would be unacceptable to grant specialized agencies and other intergovernmental organizations a right that delegations themselves did not enjoy. If he heard

no objection, he would take it that the Conference shared that view.

It was so decided.

21. The PRESIDENT said that the specialized agencies would be informed of that decision.

22. Mr. BEESLEY (Canada) said that he assumed that the specialized agencies and intergovernmental organizations would be free to place their contributions informally in delegations' boxes.

23. The PRESIDENT said that there would be no objection to that procedure.

The meeting rose at 12.55 p.m.

94th meeting

Wednesday, 3 May 1976, at 10.45 a.m.

President: Mr. H. S. AMERASINGHE.

Organization of work

1. The PRESIDENT recalled that at its 93rd plenary meeting the Conference had considered proposals for the revision of the tentative time-table set forth in recommendation 12 of document A/CONF.62/62, proposals which had been approved by the General Committee at its 40th meeting. The plenary had decided that the second stage, consideration of reports of all negotiating groups in the plenary, should cover the period 3 to 10 May. He had discussed that decision with the chairmen of the committees and the chairmen of the negotiating groups; it had been concluded that the attainment of agreement would be seriously hampered and progress would be retarded, if not gravely impaired, should the reports of all negotiating groups be considered in plenary at the present stage, unless the chairmen of the committees concerned and the chairmen of negotiating groups involved were in a position to state that the granting of further time would not facilitate the attainment of agreement.

2. On the other hand, it had also been agreed that the revised programme should be adhered to as much as possible with only such modifications as were warranted by circumstances. At its present meeting, therefore, the plenary would limit itself to the reports of the chairmen of all negotiating groups on the present state of their negotiations, the progress that had been made and the differences and difficulties that still beset them. He would therefore propose that there should be no discussion or debate on those reports and that the current meeting should be regarded as purely informative.

3. Negotiating groups 2, 3 and 6 had been established by committees; and he would therefore like the Chairman of the First Committee, who was also Chairman of negotiating group 3, and the Chairman of the Second Committee, who was also Chairman of negotiating group 6, to make their observations on the work of those groups. He would then give the floor to the Chairman of negotiating group 2 if the Chairman of the First Committee agreed. The other negotiating groups—i.e. negotiating groups 1, 4, 5 and 7—had been established by the plenary, but they were required to report the results of their negotiations to the President of the Conference and to the chairman of the committee concerned. In the case of those groups, perhaps the best procedure would

be for the chairman of each negotiating group to make his report and for the chairman of the committee concerned to make his assessment thereafter. He repeated his proposal that there should be no debate on procedure or substance.

4. It was also of the utmost importance to ensure that arrangements should be made to secure the best possible use of the remaining time available for negotiations. That would require close co-ordination and a clear understanding between the chairmen of the committees and the chairmen of the negotiating groups. He realized that it would be extremely difficult to work out questions of priority in the allocation of time between, on the one hand, chairmen of committees who might themselves be chairmen of negotiating groups, and, on the other hand, chairmen of negotiating groups, especially those groups that had been established by the plenary. He was convinced, however, that arrangements could be devised to the satisfaction of all.

5. He confirmed that there would be two formal meetings of the plenary on Friday, 5 May, for discussion of the preamble and final clauses. As he had already suggested, the final clauses should be discussed before the preamble. Document A/CONF.62/L.13,¹ on draft alternative texts of the preamble and final clauses prepared by the Secretary-General, would be formally introduced at the commencement of the first meeting on 5 May.

6. In conclusion, he said that negotiating groups that needed more time would be able to meet on 8, 9 and 10 May. Groups that wished to hold meetings on 5 May, concurrently with the plenary, would be free to do so. It was important that, when negotiations had been completed in the groups, the results should be considered by the committee concerned before being brought to the plenary.

7. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, said that negotiating group 3 had dealt with the organs of the Authority. It had been agreed in the group that the three main areas in which difficulties appeared to exist related to the composition of the Council, the voting system in the Council and the interrelationship between the powers and functions of the Assembly and those

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VI (United Nations publication, Sales No. E.77.V.2).