

Third United Nations Conference on the Law of the Sea

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Summary Records of Plenary Meetings 16th plenary meeting

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)

16th meeting

Tuesday, 25 June 1974 at 5.25 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Adoption of the rules of procedure (A/CONF.62/L.1, A/CONF.62/WP.1 and 2) (*continued*)

1. The PRESIDENT suggested that the Conference should consider first the proposal made in document A/CONF.62/WP.2. He emphasized that there was no need for delegations to commit themselves at that point; although not all the documents constituting the package deal had been issued, the Conference could save time by discussing those already available.
2. In view of the limited accommodation available, he had invited to the consultations held during the previous few days only those delegations that he had felt represented the differing views held. He proposed to hold a further series of consultations with various delegations on their proposed amendments to those parts of the rules of procedure (A/CONF.62/L.1.) not connected with the gentleman's agreement and voting requirements. Although he would be discussing specific articles with specific delegations, any other delegations were naturally very welcome to attend, but they should inform him accordingly. The purpose of the consultations would be to establish whether delegations submitting amendments to the rules of procedure would still wish to press them after the discussion of articles 37 and 39 of the provisional rules of procedure and the other elements of the package deal.
3. Considerable progress had been made on the package deal, which involved mainly articles 37 and 39 of the rules of procedure and the gentleman's agreement. He believed that there was a feeling of general agreement on the matter. He stressed that the text in document A/CONF.62/WP.2 was a proposal by the President; it was purely declaratory and it expressed the good faith of the Conference and its desire to give effect to the gentleman's agreement. It was not a rule of procedure. If the text of the declaration was adopted, he suggested it should appear in full in the record of the meeting.
4. Mr. OGUNDERE (Nigeria) said he was very conscious of the fact that the purpose of the declaration proposed by the President was to ensure that all representatives should feel that a consensus was essential to the work of the Conference, and also to ensure that justice was done to all delegations and to and by the international community.
5. Mr. WARIOBA (United Republic of Tanzania) said that his delegation had no objection to the declaration itself, which it felt should be endorsed by consensus rather than acclamation. The difference was an important one; the declaration was part of a package deal that included rule 37, from which his delegation dissented. His delegation felt that the gentleman's agreement should either be incorporated in rule 37 or be made a completely separate resolution. To accept the declaration, which contained the most important part of the gentleman's agreement, and rule 37, which translated the gentleman's agreement into practical terms, would be a sell-out and not a compromise. All the elements that it had been intended to include in the gentleman's agreement appeared in rule 37; all his delegation's amendments had been rejected.
6. It had been clear throughout the consultations that there was a strong feeling that a consensus was vital to the work of the Conference, and there had been opposition to making use of smaller bodies. Rule 37 violated that principle. If the General Committee was to play a more substantive role, his delegation would raise objections. He had serious misgivings about the 10-day deferment period provided for in the proposed rule 37. If it was going to take 10 days to take a decision on substantive issues, the negotiations leading up to the decision would

take months. Taken together, rule 37 and the gentleman's agreement made it look as if delegations had come to Caracas simply to vote. Insufficient emphasis had been placed on the importance of negotiations—an attitude that was unacceptable to his delegation. The success or failure of the Conference would be determined by what happened before the vote.

7. The PRESIDENT said he had thought that his proposal, taken in conjunction with the proposed rule 37, laid the fullest emphasis on negotiation and provided every opportunity for it. Nevertheless, he took the point made by the representative of the United Republic of Tanzania and agreed that, if some delegations had reservations, the declaration should be endorsed by consensus rather than by acclamation.

8. Mr. ROSENNE (Israel) said he had noted the President's statement that the declaration in document A/CONF.62/WP.2 would appear in full in the summary record if it was adopted, that it was not a rule of procedure, and that rule 37 translated the gentleman's agreement into real terms. His delegation had understood from the discussions, however, that a declaration of the type proposed would appear as an annex to the rules of procedure. He asked for confirmation that that was still the case.

9. The PRESIDENT said that the declaration would be a document of the Conference. The rules of procedure would contain a reference to it and to the summary record in which it appeared.

10. Mr. JAGOTA (India) proposed that the words "by acclamation" should simply be deleted from document A/CONF.62/WP.2. The declaration, which was only a declaration of intent, would be implemented in a rule to be endorsed by the Conference and did not require any qualification.

11. Mr. POLLARD (Guyana) supported the proposal to replace the word "acclamation" with the word "consensus", because consensus did not signify unanimity. He was not in favour of including the text of the declaration in the records of the Conference, and he felt that the revised rule 37 had completely emasculated the gentleman's agreement. It was no longer possible either to identify the gentleman or to locate the agreement.

12. Mr. ZEGERS (Chile) said it was his delegation's understanding that the gentleman's agreement was being discussed as part of the package deal and that it would therefore not be adopted separately at the meeting in progress. He agreed with the points made by the representative of India, and felt that the procedure contemplated in paragraph 1 of document A/CONF.62/WP.1, whereby the endorsement would take the form of a declaration by the President of the Conference, would solve the problems raised by the representatives of the United Republic of Tanzania and Guyana.

13. Mr. WARIOBA (United Republic of Tanzania) reiterated that the declaration on its own would be quite satisfactory. What his delegation objected to was the fact that the gentleman's agreement was tied to rule 37 and that the rules of procedure would contain a reference to it. His delegation objected to the proposed rule 37.*

14. Mr. ADEDE (Kenya) said the Tanzanian request was entirely justified. Most delegations had insisted all along that once the gentleman's agreement had been approved by the General Assembly, there was no need for the Conference to adopt it if it was simply a declaration of intent. The essential undertaking had been given in the General Assembly. While it was true that not all the delegations present were represented in

the General Assembly, their presence at the Conference indicated their approval of the general understanding. The Conference would be doing what the General Assembly had requested in that it would seek as far as possible to reach agreement by consensus, but he hoped that the gentleman's agreement would not be put forward in the future as an alternative set of rules. He supported the Tanzanian proposal which would satisfy his delegation: while he would not oppose a step that seemed unnecessary, he preferred the term "consensus" which safeguarded his delegation's position.

15. The PRESIDENT assured the representative of Kenya that there would be only one set of rules.

16. Mr. ENGO (Cameroon) suggested that, in view of the comments made on document A/CONF.62/WP.2, no action should be taken on it. The Conference was trying to resolve the problem of rule 37 on the basis of the gentleman's agreement, and should therefore consider rule 37 first, and then determine whether there was any need to adopt the proposed declaration which seemed somewhat controversial.

17. The PRESIDENT recalled that no opposition to the proposed declaration had been expressed in informal consultations or in meetings.

18. Sir Roger JACKLING (United Kingdom) recalled that the General Assembly had adopted the gentleman's agreement as an expression of its views on how the Conference should proceed in trying to reach agreement on substantive issues. The General Assembly had, however, rightly decided that the conference itself should decide its own procedures. The draft rules of procedure were in document A/CONF.62/L.1, but they needed redrafting. The proposed declaration in document A/CONF.62/WP.2 could well be endorsed by the Conference in order to provide guidance for the Conference and its committees in discussions and negotiations where the question of a vote arose. If the proposed declaration was not adopted, rule 37 would have to be redrafted to conform more closely to the gentleman's agreement.

19. He appealed to all representatives not to create procedural obstacles so that the Conference could proceed to the discussion of substantive items.

20. The PRESIDENT said that he had proposed the declaration incorporating the gentleman's agreement because many delegations felt it was an important part of the package deal.

21. Mr. OGISO (Japan) said that the President's comments and the statement made by the United Kingdom representative made it clear that in informal consultations no objections had been raised to the basic assumption that the gentleman's agreement would be formally endorsed by the Conference, as indicated in paragraph 1 of Conference Room Paper No. 3/Rev.2. He therefore hoped that the Conference would endorse the proposed declaration. He had no objection to adopting it by consensus, rather than by acclamation.

22. Mr. STEVENSON (United States of America) said that the idea of negotiation was of critical importance to the work of the Conference, and that the gentleman's agreement reflected an attitude of willingness to negotiate. Many delegations had, in order to reach agreement and in a spirit of compromise, accepted parts of the package deal which did not reflect their views. He hoped that a spirit of goodwill would prevail, and that the Conference would endorse the proposed declaration by consensus.

23. Mr. ZULETA TORRES (Colombia) said that his delegation would have preferred to retain the gentleman's agreement as approved by the General Assembly. It was his view that the Conference should adopt its rules of procedure and state its intention of accepting the gentleman's agreement. He therefore endorsed the President's proposal.

24. Mr. VALENCIA RODRIGUEZ (Ecuador) supported the proposal that the proposed declaration should be endorsed by consensus, rather than by acclamation. The proposed decla-

ration was more than guidance for the Conference, for it incorporated the gentleman's agreement which had been adopted by the General Assembly. It would thus have an indisputable moral force and could provide a basis for rule 37.

25. The PRESIDENT said that, since no objection had been raised, the Tanzanian proposal that the declaration should be endorsed by consensus would be included in the revised version of the proposed declaration.

26. He then introduced the amendments to the draft rules of procedure in document A/CONF.62/WP.1. The proposed amendments were based on informal consultations which had lasted for over 14 months, and he hoped that they would be acceptable to the Conference.

27. Paragraph 1 of the document dealt with the gentleman's agreement.

28. The revised rule 21 referred only to the procedure for the Conference and not to the procedure for the committees which would be dealt with separately.

29. The amendment to rule 28 would depend on the revision of rule 37 providing for deferment.

30. The deletion of rule 36 was in accordance with the views of several delegations. The representative of the Soviet Union would introduce a different amendment to rule 36 later.

31. Paragraph 6 proposed the deletion of a foot-note that referred to the gentleman's agreement approved by the General Assembly.

32. Referring to the revised rule 37, he said that paragraph 1 contained the essence of the gentleman's agreement. The word "consensus" had not been used as it did not seem appropriate to use a term that defied definition.

33. Paragraph 2 of revised rule 37 recognized that negotiation was a lengthy process and it provided for that eventuality. Subparagraph (a) was intended to provide for automatic deferment and to give the President some prerogative. Thus, the deferment could be less than 10 days, depending on the circumstances. It was also expected that the prerogative of the President or of the specified 15 representatives could be exercised only once on any matter.

34. Subparagraph (b) enabled one representative to move for a deferment of vote; such a motion could be made any number of times and the final decision would be up to the Conference.

35. Subparagraph (c) was intended to ensure that the period of deferment was used for the purpose for which it was intended. The General Committee had no right to insist on participation, since it was for the President to decide whether he would consult that or any other body. The provisions of the subparagraph also meant that any general agreement would take into account the over-all aspects of all related matters.

36. Subparagraph (d) was intended to indicate the next step in the process.

37. Subparagraph (e) was aimed at avoiding the possibility or repeated motions to determine a readiness to vote, before any progress could be made after the defeat of the last such motion. The last sentence was intended to prevent any delay going beyond the end of the session.

38. Finally, paragraph 3 of revised rule 37 was intended to avoid the possibility of an immediate vote on any matter of substance after it had been decided that all efforts at reaching agreement had failed. The intention was to enable delegations to receive instructions.

39. Turning to the revised paragraph 1 of rule 39, he pointed out that the sentence in brackets need not be part of rule 39, but could become a separate rule to read as follows: "Upon completion of its work, the Conference shall adopt the Convention on the Law of the Sea as a whole through a single vote by a majority to be determined, if necessary, in accordance with paragraph 1 of rule 39."

40. Rule 54, subparagraphs (b) and (d) of which had had to be amended, gave the procedures for voting in the Main Committees.
41. Referring to the last amendment, he said that the deletion of the appendix containing the gentleman's agreement, as approved by the General Assembly, would follow the endorsement, by consensus, of the declaration he intended to make on the subject.
42. Much time and effort had gone into the achievement of the so-called package deal and he hoped that the Conference, in a spirit of goodwill and mutual understanding, would adopt it.
43. He then drew attention to Conference Room Paper No. 5 which contained the text of the Singapore delegation's proposal relating to voting majorities, the publication of which had been requested by the representative of France.
44. Mr. THOMPSON-FLORES (Brazil), thanking the President for the constructive working paper, said that the solution was a compromise and he hoped that the Conference would adopt it by consensus.
45. With respect to subparagraph 2 (d) of the revised rule 37, it seemed to his delegation that once the Conference had decided that all efforts at reaching general agreement had been exhausted under paragraph 1 of that rule, there should be an immediate vote on the substantive matter under consideration, since the time of that vote would already have been fixed.
46. He suggested that in the revised subparagraph (d) of rule 54, the words "of a vote by the Chairman" should be placed after the word "deferment" and that the words "the Chairman" be placed after the word "rendered".
47. The PRESIDENT said that he agreed entirely with the Brazilian amendments to the revised rule 54 (d).
48. Turning to the point raised by the representative of Brazil with respect to subparagraph 2 (d) of rule 37, he said that that paragraph did not mean that a vote would take place immediately after it had been decided that no agreement had been reached. That was clearly shown in paragraph 3 of rule 37 which was intended to enable delegations to inform their Governments of the latest developments and to receive instructions.
49. Mr. CISSE (Senegal), speaking on behalf of the African group of countries, said that after consultations with the President he had informed the group that an agreement had been

near. It now appeared that there was still some misunderstanding. The African group had understood that a decision of the Conference on matters of substance would be by a two-thirds majority of those present and voting and that the convention would be adopted by a two-thirds majority of participating States. If, as the President had stated, the majority needed for the adoption of the convention had not yet been determined, then the African group of States wished to make it clear that it had expected that the convention would be adopted by a majority of two thirds of the participants at the Conference.

50. The PRESIDENT pointed out that that possibility still existed, as nothing had been decided.
51. Mr. ENGO (United Republic of Cameroon), referring to the Brazilian amendment to subparagraph (d) of rule 54, suggested that the words "of a vote by the Chairman of a Committee" be added after the word "deferment".
52. With respect to the new rule on the adoption of the convention, his delegation supported the idea that all matters of substance should be decided by a two-thirds majority of those present and voting. The issue of the adoption of the convention had been raised in an attempt to arrive at a compromise since there had appeared to be nothing in the rules which provided for the adoption of the convention as a whole. However, the adoption of the convention was a matter of a highly substantive nature and should not therefore be different from other matters of substance. His delegation did not therefore see the need for a new rule; nor did it see the need for postponing the decision on how the convention would be adopted. The new rule, as read out by the President, could lead to complications and a decision at the present meeting on the method of adopting the convention would ensure that it would receive widespread support. All expected the convention to be a realistic one and there was therefore no need for dilatory measures in deciding on how it would be adopted.
53. The PRESIDENT pointed out to the representative of the United Republic of Cameroon that rule 64 provided for the amendment of any rule of procedure of the Conference by a two-thirds majority. Thus, as the representative of Australia had stated at an earlier meeting, the decision on the adoption of the convention could be taken at any stage. A number of representatives had felt that the matter was an important one and it had thus been deferred.

The meeting rose at 7.10 p.m.

17th meeting

Wednesday, 26 June 1974, at 11 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Adoption of the rules of procedure

(A/CONF.62/L.1, A/CONF.62/WP.1 and Add.1, A/CONF.62/WP.2) *(continued)*

1. The PRESIDENT said that the informal consultations had not yet ended and would be continued in the afternoon; on the following day at the latest, a decision would have to be taken and the rules of procedure finally adopted.
2. Mr. GALINDO POHL (El Salvador) said that the document submitted by the President represented an attempt to reconcile divergent positions and reflected the complexity and the special nature of the Conference. His delegation approved of the draft but would like to make two comments on it. First, the basic principle which should govern the work of the Conference was set forth in the gentleman's agreement; that was the

principle of "consensus". The complicated machinery designed to make the consensus possible was described in rule 37, but that key word did not appear in the draft rules of procedure, which used the much vaguer term "general agreement". His delegation much preferred the term "consensus", especially if it was defined as an agreement to which there was no formal opposition even if some delegations made reservations or comments. He did not think that there was any need for him to discuss further the documents drawn up by the President but he felt that he must comment on the fact that two key documents rested on two basic but not congruent ideas, namely, consensus and general agreement. To facilitate progress, his delegation would be ready to accept a declaration of the President to the effect that the two documents in question were related and explaining the reasons why the term "general