

# **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/BUR/SR.63**

## **63<sup>rd</sup> meeting of the General Committee**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XV (Summary Records, Plenary, General Committee and First Committee, as well as Documents of the Conference, Tenth and Resumed Tenth Sessions)*

no indication of the scope of the proposed review, or whether it would be compatible with the fundamental principle that the resources of the sea-bed were the common heritage of mankind. Nor was there any indication that the United States Government would be in a position to take a decision by January 1982, or indeed at any other time.

46. In conclusion, he said that it might prove disastrous for the Conference if the issue were to be referred to a plenary meeting for discussion, and he therefore strongly urged the United States delegation to reconsider its position.

47. Mr. BEESLEY (Canada) said that the General Committee seemed to be on the verge of a serious misunderstanding. Unlike the representatives of the United States, France and Japan, he had understood the representative of Peru to propose that the discussion be continued in the plenary Conference, which was the decision-making body, and that there was no question of pushing for a snap vote as the United States seemed to believe.

48. Mr. OXMAN (United States of America) said that the United States Government would be in a position to state its definitive substantive views on the draft convention early in 1982. With regard to the suggestion that the discussion be pursued in the plenary Conference, there was no reason to suppose that that would help to solve the problem of achieving a consensus. If the intention was that a decision should nevertheless be taken by the plenary Conference, whether or not by a snap vote, the implications of such a move were most serious and must be apparent to all. The viewpoints expressed in the General Committee were not so different as to render consensus impossible and it was not at all clear that all possible efforts to achieve that end had yet been exhausted.

49. Mr. BEESLEY (Canada) said that, when it had been originally decided to proceed by consensus, there had been a clear understanding that consensus should mean neither the tyranny of the majority nor the veto of a minority. In the present instance, and although his own delegation was very strongly in favour of the early adoption of the draft convention, the United States delegation deserved some credit for the

candour with which it had expressed its position and should not be accused of stalling or of seeking its own ends by indirect means. Whereas it had appeared in Geneva that a consensus existed on the substance of the matter, it was clear that, whatever the reasons, that situation no longer obtained. Every effort must therefore be made to reach a consensus again. As the Chairman had indicated, the proposal of the Australian and Chilean delegations seemed to afford a possibility of bridging the gap and it might be useful for further discussion—perhaps of an informal nature—to be held before the matter was taken any further. He therefore urged the United States and Japanese delegations and the Group of 77 most strongly to give serious consideration to that proposal in order to avoid a deep split in the Conference.

50. Mr. ARIAS SCHREIBER (Peru) said that the threats implied by the statement of the representative of the United States were unacceptable to his delegation. It was clear that, if the United States was determined to maintain its current position, further discussion would be useless and the situation in the plenary Conference would be exactly the same as in the General Committee. If that was the situation, the only solution would be to apply rule 29 and rule 39, paragraph 3, of the rules of procedure and for the Conference to reach its decision by majority vote, due account being taken of the reservations expressed by certain delegations.

51. The CHAIRMAN agreed with the representative of Canada that a misunderstanding seemed to have arisen which further discussion of an informal nature might be able to clear up. He therefore urged the representative of Peru not to press his proposal that the debate be closed and a decision taken by majority vote and suggested that the Chairmen of the five regional groups, the Chairman of the Group of 77 and the United States representative meet with him in order to investigate further the possibility of reaching consensus and that the meeting be adjourned pending the outcome of their discussions.

*It was so decided.*

*The meeting rose at 6 p.m.*

## 63rd meeting

Thursday, 16 April 1981, at 10.15 a.m.

Chairman: Mr. T. T. B. KOH (Singapore)

### Organization of the future work of the Conference

1. The CHAIRMAN informed members that he had held two meetings with the Chairmen of the five regional groups, the Chairman of the Group of 77 and the representative of the United States, as a result of which an agreement had been reached on the future programme of work of the Conference. The agreement was as follows.

2. The tenth session would be suspended on 24 April and resumed on 3 August 1981 for a period of four weeks, until 28 August, provided that, if the Conference should so decide, the resumed tenth session could be extended by an additional week, until 4 September. He had been asked how the Conference would decide whether or not to extend the resumed tenth session. He had replied that the procedure by which the Conference would decide that question would be governed by the rules of procedure of the Conference, also taking into account the traditions of the Conference and the circumstances prevailing at the time. With regard to the programme of work, he said that the resumed tenth session would continue with the programme of work that had been agreed at the end of the ninth session in August 1980.

3. With regard to the intersessional meeting of the Drafting Committee, it had been understood that the Drafting Committee must be given sufficient time to complete its mandate, namely, the examination of the entire draft convention. It should therefore hold a five-week intersessional meeting, beginning on 29 June. In order to facilitate the attendance of experts on First Committee matters from developing countries, the Chairman of the Drafting Committee and the Chairman of the Group of 77 had agreed that it would be desirable for the Drafting Committee to take up Part XI during the last two weeks of the intersessional meeting. Thus, the first three weeks would be devoted to the examination of Parts XV, XVI and XVII and any others that remained outstanding.

4. That programme of work had been fully agreed upon by the Chairmen of the five regional groups, the Chairman of the Group of 77 and the representative of the United States, as well as the Chairman of the Drafting Committee. He therefore hoped that the General Committee would agree to it without objection.

5. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said that one element had inadvertently

been left out of the general understanding. Since five weeks would not be enough time for the Drafting Committee to complete its work, it would have available to it an additional week during the post-session meeting, as well as any additional time necessary.

6. The CHAIRMAN said it was, of course, granted that if the Drafting Committee was unable to complete its mandate during the intersessional meeting, additional time must be allocated to it. He wished, however, to make a strong request to the Chairman and members of the Drafting Committee that they should do their best to complete their mandate during the intersessional meeting.

7. Mr. ARIAS SCHREIBER (Peru) said that before he could express agreement or disagreement with the Chairman's proposal, he would need to have a clearer understanding of the Chairman's remark that the decision whether or not to extend the resumed session would be taken on the basis of the rules of procedure, the traditions of the Conference and the circumstances prevailing at the time. He did not object to the reference to the rules of procedure. However, he could not agree to any provision that might allow for following a procedure different from that established in the rules. The decision whether or not to extend the resumed tenth session was a procedural one and, accordingly, under article 39, paragraph 3, of the rules of procedure, should be taken by a majority of the representatives present and voting. In a conference dealing with matters of international law, such as the Conference on the law of the sea, all delegations had the obligation to respect the established rules. The Conference could not act in a manner contrary to its own rules merely in order to satisfy one delegation which, paradoxically, had disregarded the programme of work adopted by consensus at Geneva.

8. The CHAIRMAN said that his statement had been very clear. He had said that the question would be decided in accordance with the rules of procedure of the Conference, which, of course, took precedence, and that the traditions of the Conference and the circumstances prevailing at the time would also be taken into account. When the time came, the Conference would make the appropriate decision. Naturally, the primary consideration would be to follow the rules of procedure.

9. Mr. ARIAS SCHREIBER (Peru) said that he could not agree with the Chairman's formulation. In 1973 the Conference had reached a gentleman's agreement to the effect that it would make every effort to settle substantive questions by consensus. The question of the extension of a session was not a substantive one. Therefore, the only relevant consideration in that regard was article 39, paragraph 3, of the rules of procedure. In practice, procedural decisions had been taken by consensus, but that was because there had actually been consensus and it had been unnecessary to vote. However, he recalled at least one occasion when there had been no consensus on a procedural question and a vote had been taken. Certainly, if at the resumed tenth session there was consensus regarding extension, it would not be necessary to vote, but that outcome could not be established beforehand. Therefore he could not agree to the Chairman's proposal, which left the door open for the possibility of departing from the rules of procedure of the Conference and was tantamount to amending those rules. Under article 67, an amendment would require a two-thirds majority. For reasons of principle, his delegation could not consent to such a proposal. Any exception to the rules of procedure that might be made for the benefit of one delegation would set an undesirable precedent and would open the door for a veto by that delegation, which had already made a considerable effort to impose its will on the Conference. He therefore proposed that all reference to the manner of deciding on a possible extension of the resumed tenth session should be deleted from the Chairman's proposal, except possibly for a simple reference to the rules of procedure.

10. The CHAIRMAN said it appeared that the representative of Peru continued to construe his remarks in a manner not intended by the author. It would be incorrect and wrong to construe his remarks as implying that the question whether or not to extend the session would be decided otherwise than in accordance with the rules of procedure. It was incorrect and wrong to construe his remarks as implying that there was an intention to amend the rules of procedure in their application to such a question. It was incorrect and wrong to construe his remarks as meaning that some other exception to the rules of procedure would be applicable to the question. Obviously, if he had intended any such thing, the Chairman of the regional group to which Peru belonged would not have consented, nor would the Chairman of the interest group to which Peru belonged, the Group of 77, have consented. He had merely been stating the absolutely obvious, namely, that the decision would be taken in accordance with the rules of procedure of the Conference; however, as the representative of Peru knew, the rules of procedure of any human institution must not be applied without taking into account the relevant circumstances prevailing at the time and also taking into account the tradition and history of the institution.

11. He appealed to the representative of Peru not to stand in the way of a unanimous agreement by the Chairmen of all the five regional groups and the Chairman of the Group of 77.

12. Mr. EVENSEN (Norway) said that the Chairman's remarks had been very clear. There was no doubt that the question of the extension of the resumed tenth session was a procedural one and that the rules of procedure would apply. He had not understood the reference to tradition to mean anything other than that when the time came to decide on the extension, the Conference would follow its practice of holding meetings of the regional groups and that such meetings usually made voting superfluous. Obviously, the circumstances prevailing at the time, such as the degree of progress that had been made during the resumed tenth session, would have to be taken into account. That was all he had understood from the Chairman's proposal, to which his delegation agreed. The practice referred to had worked well in the past and had not led to any change in the rules of procedure.

13. Mr. CALERO RODRIGUES (Brazil) said he shared the view of the representative of Peru that the question of extension of the session was a procedural one. However, in the light of the explanation given by the Chairman, he agreed with the representative of Norway. There was no doubt that the matter would ultimately be decided according to the rules of procedure. It was his understanding that the Chairman's additions to the proposal meant that the Conference should bear in mind its usual practice—in other words, that it should try to reach consensus first and also take into account the circumstances prevailing at the time. Although the Chairman's additions were not really necessary, they were not harmful. He hoped that the representative of Peru would agree with that interpretation.

14. Mr. MWANANG'ONZE (Zambia) asked the Chairman to clarify whether the resumed tenth session would be a negotiating session, that is to say, one at which all outstanding issues would be discussed. He also wished to know whether it would be the last session before Caracas and whether the group that had met with the Chairman had made any suggestions regarding the venue for the resumed tenth session.

15. The CHAIRMAN said that the question of the venue would be taken up after the General Committee had reached a decision on the future programme of work. It had been agreed that the resumed tenth session should continue the programme of work agreed upon at the end of the ninth session. He hoped that it would be possible to complete that work at the resumed tenth session; however, that would depend on the collective effort of the members of the Conference.

16. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation had accepted the proposal for a five-week resumed tenth session as the best compromise solution in the light of the programme of work and the aim of the Conference. It had now been proposed that the resumed tenth session should be scheduled for four weeks with the possibility of a one-week extension, to be decided upon according to the rules of procedure and with due regard for the circumstances prevailing at the time. In fact, however, the Conference had always taken into account the circumstances prevailing at any particular time. His delegation would prefer it if, dispensing with all the caveats, the resumed session could simply be scheduled for five weeks and then finish earlier if that were possible. Nevertheless, his delegation would accept the Chairman's formulation because it would bring a reluctant horse to water. He wished to make it clear, however, that there must be no derogation from the rules of procedure and that the programme of work should be followed to the end.

17. Mr. TSHIKALA KAKWAKA (Zaire) said that his delegation was willing to go along with the Chairman's proposal but would like clarification as to whether the August session would hold true negotiations on questions of substance or would be merely a formal exchange of views. He did not object to a reference to tradition and circumstances so long as it was understood that the rules of procedure took precedence.

18. The CHAIRMAN said that at the resumed tenth session every effort would be made to find acceptable solutions to all outstanding problems. He would encourage consultations aimed at finding new compromises and improving those provisions of the draft convention that needed improvement in order to enhance the prospects for consensus. It had not yet been possible to find solutions to the four problems identified at the end of the ninth session, nor had acceptable compromises been reached on other parts of the draft convention. The resumed session should redouble its efforts to achieve those goals.

19. He appealed to the representative of Peru to agree to his proposal on the future programme of work of the Conference, in the light of the interpretation that had been given by the representatives of Norway and Brazil.

20. Mr. ARIAS SCHREIBER (Peru) said that, in the light of the explanation given by the Chairman and the comments of other representatives, he would accept the Chairman's proposal, on the understanding that it would be clearly stated in the record that if there was no consensus on the extension of the resumed tenth session, the rules of procedure would be applied. The Chairman's reference to tradition and circumstances should be understood to be the expression of a desire, a statement of the obvious, which did not affect the validity of the rules of procedure. It should be clearly understood that no delegation had any right to invoke the agreement and the additional references to tradition and circumstances as justification for any claim that a decision should be taken otherwise than on the basis of the rules of procedure. In order to avoid any misunderstanding and to make the meaning of the proposal perfectly clear, he asked that, when submitting the recommendations of the General Committee to the plenary Conference, the Chairman should repeat the explanation he had just given.

21. The CHAIRMAN thanked the representative of Peru for his co-operation. Obviously, the rules of procedure had primacy, and if it was necessary to resolve a question, they would apply. As the representatives of Norway and Brazil had said, the Conference had always succeeded through consultations in avoiding any need for application of the rules of procedure. It was his hope that that would be possible in the future as well.

22. If there was no objection, he would take it that the General Committee agreed to recommend to the plenary Conference the future programme of work he had proposed.

*It was so decided.*

23. The CHAIRMAN pointed out that the General Assembly had not given the Conference a mandate to hold a resumed tenth session. If there was no objection, he would take it that the General Committee authorized him to take the matter up with the President of the General Assembly and to request that the General Assembly should adopt a resolution giving the Conference such a mandate.

*It was so decided.*

24. The CHAIRMAN informed members that in the consultations he had held with the Chairmen of the five regional groups, the Chairman of the Group of 77 and the representative of the United States, some had expressed the desire that the intersessional meeting of the Drafting Committee and the resumed tenth session of the Conference should be held at the same venue. On the question of the venue, two regional groups, namely, the group of Eastern European States and the group of Western European and other States, had expressed a clear preference for Geneva. The other three regional groups had been flexible with regard to the venue. In the light of that fact, it had been agreed that it would be logical to recommend Geneva as the venue rather than New York. Before the General Committee took a decision, however, he wished to ask the representative of the Secretary-General to provide information regarding the availability of services and facilities.

25. Mr. ZULETA (Special Representative of the Secretary-General) said that the Secretariat had assumed that the resumed tenth session would require the same level of services as the current session, arrangements for which had been made on the basis of the programme of work set forth in document A/CONF.62/BUR.13/Rev.1. The Department of Conference Services had studied the capabilities of New York and Geneva. At New York, the calendar of conferences included meetings of at least 13 subsidiary organs of the General Assembly or committees set up by the General Assembly, all of which would have to be changed if the Conference on the law of the sea was to meet at New York in August. In addition, the documentation that normally had to be prepared for the regular session of the General Assembly would occupy a substantial part of the translation and reproduction services in August. The General Assembly's documentation, of course, had precedence over all other requirements unless the General Assembly itself decided otherwise. In the opinion of the Secretariat, holding the resumed session of the Conference on the law of the sea at New York would preclude the holding of any other meetings or activities of the General Assembly during that period. In the light of those considerations, the Secretariat had reached the conclusion that it would clearly be preferable to hold the resumed session at Geneva, where more services were available, the problem of preparing documentation would be easier to solve and more space was available for meetings. The Conference on the law of the sea and the General Assembly would, of course, make their own decisions, but the Secretariat felt that it had the duty to point out the problems that would be encountered in trying to provide adequate services at New York.

26. With regard to the Drafting Committee, the Secretariat saw no major problems in holding the intersessional meeting at Geneva; although there would be substantial reproduction of documents, no special problem was foreseen in respect of translation.

27. The CHAIRMAN said that if there was no objection, he would take it that the General Committee agreed to recommend to the plenary Conference that both the resumed tenth session of the Conference and the intersessional meeting of the Drafting Committee should be held at Geneva.

*It was so decided.*

*The meeting rose at 11 a.m.*