

# **Third United Nations Conference on the Law of the Sea**

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## **Report of the Chairman of the First 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)*

at this stage of the work of the Conference that matter is being dealt with by the two groups of countries directly concerned, which have established a procedure for consultations on the subject. I deemed it necessary, however, to point out at the first informal meeting that the Committee's work in this final phase of the Conference should be directed towards supplementing or improving the draft convention, and not towards reopening discussion on the basic elements of the agreements reached after many years of effort.

3. Nearly all the informal suggestions considered at these meetings had already been submitted to the Committee at previous sessions. It should be noted, however, that on this occasion a revised version of one such suggestion was presented.

4. The number of statements made at these meetings totalled 119, and many of the articles in Parts II to X of the draft convention were referred to or touched on. It may be said, however, that most of those statements focused on very few questions.

5. One of these questions, a very controversial one, was the subject of lengthy debate, during which detailed explanations of the various positions were given and alternative means of achieving reconciliation were suggested. In connexion with this question, a number of delegations requested the establishment of a working group or the holding of consultations among the most interested delegations with a view to harmonizing the different positions. In response to that request, I carried out consultations on the subject and found that there was, at least for the present, no agreement on the establishment of a working, negotiating or consulting group for that purpose.

6. The informal suggestion presented in the Committee for the first time by one delegation was also given special attention in these discussions. The delegation making the suggestion announced at the end of the meetings that it would hold consultations with the other delegations which had shown an

interest in it with a view to submitting to the Committee in due course, for its consideration, a precise formulation taking into account the comments that had been made on the subject.

7. During these meetings, the delegations interested in some of the informal suggestions made at previous sessions stated that they were continuing the consultations aimed at finding generally acceptable formulae.

8. As I said by way of summing up at the end of the last of these meetings, the following conclusions may be drawn from these discussions:

(a) There is a virtual consensus on the fact that it is not desirable or practical to reopen discussion on the basic Committee issues, which, while they do not in all cases represent a consensus, are the formulae that come closest to commanding general agreement and that have been arrived at through long and arduous negotiations.

(b) It is possible to introduce, at such time as the Conference may decide, minor changes designed to supplement, clarify or improve the draft convention, always provided, of course, that they command the necessary support and will help to facilitate acceptance of the text by the largest possible number of delegations.

(c) Although some of the draft articles, as now worded, present difficulties of various kinds for some delegations, the draft as a whole is acceptable to the great majority of delegations. There are actually, in the view of a significant number of delegations, very few questions that require further discussion and negotiation.

9. Lastly, it seems to me appropriate to note in this report that as Chairman of the Second Committee I participated, along with the President of the Conference and the Chairman of the Drafting Committee, in three of the informal meetings of the Plenary to consider and adopt the recommendations of the Drafting Committee concerning Parts II to X of the draft convention.

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### Report of the Chairman of the First Committee

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1. At the end of the resumed ninth session I reported that there had been what I consider to be a break-through in our negotiations on the outstanding hard-core issues before the Committee. It was clear from the reactions of all delegations, in the First Committee and in the plenary Conference, that the proposals which were later incorporated in the draft convention enjoyed a consensus. The report I submitted therefore outlined only a few issues which required attention before the First Committee could terminate its mandate.

2. It is common knowledge that the United States delegation announced at the commencement of this session their decision to review the draft convention and insisted that the Conference must await the end of such a review before any fruitful negotiations could take place with a view to formalizing the draft. The Group of 77 expressed the opinion that no useful negotiations therefore could be undertaken to resolve the issue of preliminary investment protection. Consequently, the work of the Committee at this session proceeded with an unhappy cloud hovering over. My consultations left me in no doubt, however, that it was the will of the delegates to proceed with the negotiating effort on all outstanding issues, bearing in mind the effect of the reservations expressed.

3. During this session the Committee held four meetings, all formal. The first two were devoted to general debates on the Preparatory Commission. The other two meetings provided opportunity for general comments on two reports of the Secretary-General: one on potential financial implications for States parties to the future convention on the law of the sea (A/CONF.62/L.65), and the other on the effects of the production limitation formula under certain specified assumptions (A/CONF.62/L.66).

4. In addition, the issue of the seat of the Authority (art. 156, para. (3)) was taken up for the first time. The opportunity was also given for the examination of all or any matter that delegations felt had not been or had never been dealt with formally in the Committee.

5. As may be recalled, the question of the Preparatory Commission had been considered by the plenary Conference at its informal meetings, as part of the President's consultations on the final clauses. It became clear that the issues involved were so closely related to the issues negotiated on Part XI that the First Committee was the more appropriate forum for the negotiating process.

6. Consequently, following consultations with the President at this session, the matter was taken up formally for the first time. In order not to lose the valuable contents of the President's report on the subject (A/CONF.62/L.55),<sup>37</sup> and also to facilitate our examination, it was decided that those contents be made the basis for discourse. Furthermore, it was agreed that in order to avoid duplication, the negotiating effort should be co-chaired by the President and the Chairman of the First Committee, using the system of the working group of 21.

7. The working group of 21 held four meetings and discussed, *inter alia*, critical issues relating to the composition, mandate, decision-making system, and the financing of the Preparatory Commission. Consistent with the understanding, it took as a basis for negotiation the report of the President on the work of the informal meetings of the Conference on the question of the Preparatory Commission, in particular the annexed draft resolution providing interim arrangements for the International Sea-Bed Authority and the Law of the Sea Tribunal.

8. Following an extensive and illuminating discussion on the issues in the working group of 21, the President of the Conference and I commenced preliminary consultations with the members of the working group of 21 with a view to updating the ideas contained in the said draft resolution. I am of the opinion that the efforts made by the First Committee at its various negotiating fora on the Preparatory Commission, though preliminary, have achieved some constructive results in identifying major issues and the interrelationships among them. I am encouraged consequently to make the following observations.

9. First, there appeared to be general agreement that the Preparatory Commission should be established by a resolution of the Conference included in the final act.

10. Secondly, the objective in establishing the Preparatory Commission was broadly recognized, that is to say the purpose of making provisional arrangements for the first session of the Assembly of the International Sea-Bed Authority, and of its Council. The objective included such arrangements regarding the establishment of its other organs, namely, the secretariat and the Enterprise, as well as the convening of the International Law of the Sea Tribunal.

11. The title of "Preparatory Commission for the International Sea-Bed Authority and the International Law of the Sea Tribunal" may prove to be the most appropriate.

12. On the issue of the membership of the Commission, the text of the President's draft appeared to present difficulties for some of the industrialized countries. They would prefer that it be opened to all signatories to the final act. The other participants insisted that only States which demonstrate an intention to be bound by the convention should be members. They submitted consequently that signature to the convention would be a minimum criterion, as this would also induce early commitment to the treaty and consequently prevent participation by those States who may have reached the decision not to be party to it anyway.

13. The Group of 77 appears to be ready to accept a compromise granting observer status to States which sign only the final act, granting them power to participate fully in the deliberations of the Commission but denying them a right to participate in the decision-making procedures.

14. This first reading also focused on the broad question of the decision-making process and the adoption of the Commission's rules of procedure. Three relevant areas were: the rules of procedure to be applied in the Preparatory Commission pending the adoption of its own rules of procedure; the

majority required for the adoption of its rules of procedure; and provisions for voting on substantive issues.

15. The exchange of views, especially on the latter two, was somehow inconclusive. It would appear that the Western industrialized countries and the Eastern Socialist countries insist on the consensus rule. The Group of 77 would favour a two-stage approach by which the failure of a quest for consensus would be followed by a voting procedure. It is clear that more consultations in the negotiating process will be inevitable.

16. The function, or the mandate, of the Commission was examined. While it appeared that general agreement existed for the proposition that the Preparatory Commission would have the broad mandate of preparing for the establishment of the International Sea-Bed Authority and the International Law of the Sea Tribunal, the industrialized countries considered that the discussion of the issue of the establishment of the Enterprise was premature, as it had to be taken up in discussion on the preliminary investment protection proposals. The Group of 77 and other members of the working group of 21 consider this to be an imperative item, as the Enterprise would be a main organ to effect the agreed working of the parallel system.

17. The exchange of views appeared to have been more productive on the substantive question of the function of the Commission, especially as it related to its role in the preparation of rules, regulations and procedures. It is my impression that further reflection will be desirable to determine the scope of this function.

18. There appears to be general agreement for the proposition that the Secretary-General of the United Nations should be empowered to convene the Commission, certain criteria being satisfied with regard to the timing. That which was recommended in document A/CONF.62/L.55, requiring 50 signatures to the convention or the same number of States depositing instruments of accession, received widespread support. It was suggested, however, that the wording proposed in paragraph 10 should be harmonized with that specified in article 307.

19. There is general agreement that the life of the Preparatory Commission should not be unduly long, having regard to the nature of its mandate and also of the need for the Authority to be established expeditiously to perform functions assigned by the Convention. The view was expressed by some, however, that if that life must be extended beyond the convening of the Assembly, the latter, that is the Assembly, alone must decide to grant it.

20. The issue of the financing of the Preparatory Commission presented some difficulties. It was clear that all sides would support that the United Nations should provide the funds for the initial costs. Yet the terms elicited a divergency of views. The concept of a loan proposed by President Amersinghe's text was rejected by those who saw that it involved fundamental legal as well as practical difficulties. The Group of 77 and the Eastern Socialist countries argued further that until the Authority was established the United Nations regular budget should finance the Commission in the same way as with the present Conference. Others pointed to the fact that observers or Member States of the United Nations who are not signatories of the convention would be compelled to contribute to the financing. It is my feeling that the second reading on this issue might, hopefully, be more fruitful.

21. The Special Representative of the United Nations Secretary-General introduced two reports relevant to the mandate of the First Committee, dealing respectively with potential financial implications for States Parties to the future convention on the Law of the Sea and the effects of the production limitation formula under certain specified assumptions.

22. With regard to document A/CONF.62/L.66, the Committee decided to postpone detailed discussion until the

<sup>37</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

resumed session. During the discussion of this report, some delegations proposed that a group of experts be established, which could utilize the report of the Secretary-General as the basis for an evaluation of the production limitation formula. Since there was no consensus with respect to establishment of such a group, I suggested that I be authorized to hold informal consultations with a view to reaching consensus on how to proceed.

23. The report on the financial implication of the future convention offered a preliminary estimate of the cost involved in the functioning of the following organs of the Authority: the Authority—including the Assembly, Council, its Economic Planning Commission and Legal and Technical Commission and the secretariat; the Enterprise—including the Governing Board and the secretariat; the International Tribunal for the Law of the Sea—including the Sea-Bed Disputes Chamber, Special Chambers, the *Ad Hoc* Chamber and the Office of the Registrar; the Commission on the Limits of the Continental Shelf; and the Preparatory Commission, and any subsidiary bodies it may establish.

24. In introducing the report the special representative made the following observations:

(a) Costs of the Authority and the Enterprise could be reduced considerably if both organizations are located at the same site and share the staff and institutional facilities on the reimbursement basis;

(b) With regard to the Preparatory Commission: Cost estimate was based upon the assumption that the Preparatory Commission would be located at a site of United Nations Headquarters. If the Commission is located at a site other than the United Nations Headquarters, extra cost must be taken into account, depending upon the extent of offers made by the host country;

(c) The manning table of the secretariat of the Authority is lower than such specialized agencies as the World Intellectual Property Organization and the United Nations Environment Programme.

25. The majority of States, in commenting on the report, stressed the necessity for cost-efficiency of the new organization, and expressed the view that the report is a sound basis for a careful study by the Conference.

26. The First Committee provided opportunity for the discussion of all outstanding matters, including those never before dealt with under its mandate.

27. As I indicated above the question of the headquarters of the Authority was dealt with for the first time since the announcement at the Caracas session of the candidacy of Jamaica, its formal endorsement by the Group of 77 and subsequent introduction of the subject in the informal single negotiating text. Article 156, para. (3) in the draft convention (A/CONF.62/WP.10/Rev.3 and Corr.1 and 3) shows that in addition to Jamaica, there are two other candidacies: in order of presentation, Malta and Fiji.

28. During the discussion the Jamaican delegation presented their case, concluding that construction work for receiving even the Preparatory Commission is well under way. The summary record of the 53rd meeting reflects the arguments and information presented by that delegation.

29. The delegation of Malta stated that they could not participate in the debate on the grounds that the First Committee was not the proper forum. There had been an agreement with the President and other candidates that a decision on the issue would be taken in the plenary meeting at the tenth session. This view was, broadly speaking, supported by the Fiji delegation.

30. During the discussion, the Chairman of the Latin American group, as well as other delegations from Latin

America who spoke on this issue, many African countries and Yugoslavia spoke out in favour of Jamaica. A number of speakers did not find it expedient to declare a choice at this stage.

31. It is important to note from the debate that all three candidates declared that preparations were afoot to receive the Authority, although only Jamaica undertook to state details of such preparations.

32. Although our main business at this session was to deal with the issue of the Preparatory Commission, delegations were given an opportunity to raise any other issues which were of concern to them.

33. At the 50th meeting on 19 March 1981, the delegation of Zambia, supported by the delegations of Zaire and Zimbabwe, made an appeal that the issue of production policies be examined. Intensive consultations at various levels, within and across interest groups, have since been launched and may be expected to continue at the resumed session.

34. The specific issues in question were the impact of the production limitation formula set out in article 151 of the draft convention on the existing and future land-based nickel, copper, cobalt and manganese industries and the measures for the protection of developing countries from adverse effects on their economies or on their export earnings likely to result from sea-bed mining.

35. Among other matters, the delegation of Australia made a suggestion about provisions dealing with unfair economic practices which may cause injury to the trading interests of the economy of another State Party. An exchange of views took place during an informal meeting of the interested delegations and consultations on this issue are continuing.

36. During the session, I encouraged continuing informal contacts between interested parties concerning the problem raised by some less developed western States concerning an increase in minimum representation for geographical groups in the Council. While these continue, I have nothing to report at this stage.

37. Finally I should like to conclude with the same concern I expressed at the commencement of this session. The First Committee has, for nearly a decade, grappled with perhaps the most complex problems that ever faced any Conference. It has had to achieve accommodation of global conflicts of interests, inspired by an incredible sense of dedication to the loftiest ideals of a generation desperate for international peace and security.

38. So far not a single nation, large or small, definitely not the rich, has been left out of the negotiating effort. The negotiating texts produced through the years have shown a clear attempt to meet the needs and interests of all States, and more realistically those of the industrialized States.

39. The Conference cannot at this late stage, when at least we have provoked passions of hope in the international community, afford to indulge in any exercise in futility or any backward or destructive step. We must at all cost preserve that which we have succeeded in accepting by consensus. The packages worked out may have been delicately put together; but it is clear that they are made strong by the consensus they enjoyed.

40. At the resumed session we must all bear this in mind. We must maintain our spirit of accommodation on outstanding issues and any pleas that may be made for additions. But what we must not do is to destroy directly or indirectly the results of our fruitful labours so far. It is in the fact of universal accommodation and compromise that our nations can hope to draw strength for individual survival.