

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

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## **26<sup>th</sup> meeting of the Third Committee**

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# THIRD COMMITTEE

## 26th meeting

Tuesday, 16 March 1976, at 3.35 p.m.

Chairman: Mr. A. YANKOV (Bulgaria).

### Organization of work

1. The CHAIRMAN welcomed the members of the Committee, and said that the fourth session of the Conference was particularly important. He hoped that members would seize the opportunity to meet the objectives of the Conference, namely, a single convention on the law of the sea.

2. The negotiations would be conducted on the basis of the informal single negotiating text (A/CONF.62/WP.8/Part III)<sup>1</sup> which had resulted from the agreement reached at the 55th plenary meeting on 18 April 1975. He was aware that the negotiating text had already been the subject of discussions and negotiations and that, while some of the provisions might be acceptable to all, others would need further study.

3. The Third Committee had had a history of mutual respect and accommodation and members had always worked as a team despite differences in the official positions of their Governments. At the third session, the Committee had devised the best procedure for conducting negotiations, whereby all meetings were open to all members. He therefore expected that the same spirit of co-operation would prevail at the current crucial session. Serious negotiations were now required; as the Secretary-General had stated, the present session was probably the last opportunity for United Nations action on the law of the sea because, if it did not succeed, unilateral measures might frustrate the international negotiation process.

4. The purpose of the current meeting was to decide on guidelines for the Committee's work; in other words, the Committee should now translate the suggestions of the President of the Conference into a programme of work. In that connexion, he wished to inform the Committee that the delegation of the Sudan had informed him that Mr. Abdel Magied Ali Hassan would replace Mr. Manyang d'Awol as Rapporteur of the Committee, and the delegation of Colombia had informed him that Mr. Rivas would replace Mr. Ospina Hernández as a Vice-Chairman of the Committee.

5. In line with the suggestions made by the President of the Conference, the officers of the Committee and members of the Secretariat had met to consider the following procedures, which he suggested the Committee should apply.

6. First, at the present stage of the work there was no need for general discussions on any item, including the informal single negotiating text. That did not mean that representatives could not state the positions of their Governments; however, discussions should now be focused on key issues and on specific articles of the text, which could be considered article by article, by groups of articles or on the basis of particular issues that could be taken together.

7. Secondly, until such time as the Committee decided to change its method of work, he would suggest that all discussions on the text should be informal. He would also suggest that objections to, or proposals regarding, the provisions of the text should be submitted as informal amendments in as clear and precise terms as possible. Whenever a delegation felt the need to submit amendments in writing, those amendments could be circulated as informal papers containing references to the articles concerned, the date of submission and, if so desired, the names of delegations associated with the informal amendments.

8. Thirdly, as the President had suggested, there should be no alternative texts submitted which would replace the entire text or substantial portions of it, lest that should lead to a proliferation of alternative texts.

9. Fourthly, he suggested that the Committee should adopt the procedure which had proved so successful at Geneva when he, as Chairman, had requested Mr. Vallarta (Mexico) to preside over the informal discussions on the protection and preservation of the marine environment and Mr. Metternich (Federal Republic of Germany) to preside over the informal discussions on marine scientific research and the transfer of technology.

10. Fifthly, he suggested that there should be a general understanding that the Chairman could at any stage decide to conduct the negotiations personally, with the assistance of the other officers of the Committee.

11. Sixthly, throughout the second and third sessions the Committee had always held informal plenary meetings and all *ad hoc* working groups had been open-ended. At Geneva, the practice had been established of holding one formal meeting per week, with summary records, for informative progress reports and for the submission of new proposals by delegations. It was his understanding that at the present stage there should be no need to meet formally on such a regular basis, since the informal meetings were open to all and would, he hoped, be attended by all delegations. Furthermore, for the time being efforts would be concentrated on the single negotiating text and not on formal new proposals. That did not preclude the Chairman and members of the Committee from convening a formal meeting when it was deemed necessary.

12. Seventhly, at some stage—say, after four weeks of discussions on key issues and on the main provisions of the text—the Chairman, taking into account the observations, proposals and objections of delegations, would submit a revised single negotiating text, which would still be an informal document. Then, if the Committee so decided, there could be further discussions on the revised text. Subsequently, on the initiative of the President of the Conference, that revised text and others from the First and Second Committees would be issued as a single document, which could be considered formally or informally.

<sup>1</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

13. Eighthly, in order to provide proper co-ordination with the two other Main Committees of texts and amendments which might be adopted later, the technical assistance of the Drafting Committee should be sought. The terms of reference of the Drafting Committee made provision for it to assist the Main Committees in preparing texts. However, at the present stage there was no need for a formal decision on the type of working relationship that should be established with the Drafting Committee.

14. Finally, in view of the limited conference facilities and staff available, informal meetings of the Committee would have priority over other informal group meetings. However, as in the past, there should be a spirit of accommodation between the officers of the Committee and members responsible for other informal meetings so that consultations and informal discussions could be held.

15. He wished to emphasize that flexibility should be the guiding principle throughout the Committee's work and that all procedural decisions should be subject to revision if the Committee so decided.

16. Mr. LEGAULT (Canada) said that his delegation was in general agreement with the procedures outlined by the Chairman. He wished, however, to emphasize the need for flexibility in applying those procedures, particularly where informal consultations were concerned. In other words, his delegation hoped that those working procedures would be applied in such a way that there would be informal consultations of all kinds.

17. Mr. BÁKULA (Peru) said that the Chairman's suggestions satisfactorily reflected the desires of all delegations. His delegation agreed that at the current stage the Committee should work as it had at the third session and should endeavour to achieve results reflecting the interests of all delegations. It also agreed that the Committee should apply the criterion of flexibility so that it could have the benefit of the opinions of delegations or groups of delegations that had, up to that time, been working together. His delegation made that suggestion because the Chairman had stated that no text should be submitted which might have the effect of replacing the single negotiating text and thus lead to a proliferation of other texts. While the informal single negotiating text was of value, the views and interests of many delegations which were in line with those of the Group of 77 were also important, and they were not reflected in that text. Furthermore, other suggestions had been made and agreements reached since the third session, and they too should be taken into account. If they were not, that would mean that the criterion of flexibility was not being applied. It should be remembered that the arrangement decided upon at the 55th plenary meeting on 18 April 1975 stated that the single text should take account of all the formal and informal discussions held so far, would be informal in character and would not prejudice the position of any delegation, nor would it represent any negotiated text or accepted compromise. Furthermore, it should not be regarded as affecting the status of proposals already made, even if those proposals were from groups rather than from individual delegations.

18. His delegation also wished to suggest that the two working groups under the chairmanship of the representatives of Mexico and the Federal Republic of Germany should not meet simultaneously.

19. The CHAIRMAN said that, while amendments to the informal single negotiating text should not revise the text so substantially as to constitute an alternative text, that did not mean that delegations were limited in any way. According to the decision taken by the Conference at its 55th plenary meeting, the informal single negotiating text was a procedural device which would not prejudice the position of any delegation. While it was hoped, therefore, that negotiations would be based on the single negotiating text, the Committee

was not obliged to accept or reject the text as it stood. Delegations had the right to submit proposals and amendments; if gaps existed in the text they should be filled, and if some provisions were not generally acceptable they should be amended. Any agreement reached during the initial stages would be reflected in the Chairman's revised text. The two working groups would not meet at the same time.

20. Mr. JAIN (India) said that the procedures adopted at previous sessions had proved effective, and many of the suggestions made by the Chairman for the current session were acceptable. The informal single negotiating text provided a good basis for negotiation but could not be binding, since the point of view of his own and other delegations had not been accurately reflected. The Chairman had suggested that the Committee might consider the informal single negotiating text article by article; however, the text formed a unity, and in some cases it might be necessary to consider several articles together. Since its publication in May 1975, the single negotiating text had been considered by the Group of 77 and by an informal group of juridical experts. Some progress had been made in those groups and should be reflected in the Chairman's revised text. However, any revisions should reflect the views of the large majority of delegations. In general, informal gatherings should be encouraged, since they had proved helpful.

21. The CHAIRMAN urged the Committee not to renew discussions on points on which agreement had already been reached. He agreed that related key issues might best be discussed together. Informal meetings would not be discouraged, but when they clashed with formal or informal meetings of the full Committee, the latter would be given priority.

22. Mr. AL-HAMID (Iraq) said that the Committee must adopt a flexible approach, or no tangible results would be obtained. The rights and interests of all States must be safeguarded. While the informal single negotiating text did not always perfectly reflect the views of all countries or the discussions at previous sessions, it did provide the basis for a convention acceptable to all.

23. Mr. LO Yu-ju (China) said that, in order to establish a law of the sea which met the demands of the modern era and safeguarded the rights and interests of all countries, it was vital to establish viable procedures from the outset. Satisfactory progress had not yet been achieved and could only emerge from consultations based on complete equality. In arranging its meetings, the Committee should not forget the need for small delegations to participate in discussions on substantive issues on an equal basis.

24. The informal single negotiating text was merely a point of reference and could not affect the right of delegations to submit new proposals. The text had not been discussed in any way, and on several substantive questions it did not fairly represent the point of view of many countries. Delegations should therefore have the right to make general statements on the text.

25. If the developing countries maintained their unity, the Committee would make progress. His delegation stood resolutely alongside the developing countries and all countries opposed to maritime hegemony.

26. Mr. CROSBY (Ecuador) said that the Chairman's procedural proposals were satisfactory. While the work undertaken to produce the single negotiating text was admirable, by the fact of its being a first attempt it was not perfect and should be regarded as one set of guidelines among others. Some points of view expressed at previous sessions had been neglected, and several substantive questions, such as the sovereignty of States with respect to the sea and the definition of their jurisdiction, would have to be discussed again if an agreement was to be reached. Since several questions were interdependent and were closely related to

questions being discussed in other Committees, a general debate would eventually be necessary. The freedom of countries to express their views should not be limited by the desire to prevent the appearance of alternative texts. Some proposals and amendments based on the single negotiating text would have to be of a formal nature and would therefore have to be submitted at formal meetings. Flexibility and mutual co-operation were vital.

27. The CHAIRMAN said that, while he did not wish to exaggerate the time factor, it was essential to proceed with a sense of urgency. Unilateral actions that would confront the Committee with faits accomplis would be detrimental to its work. The negotiations should proceed informally until the Committee as a whole decided that other procedures, such as the convening of formal meetings, should be followed.

28. Mr. TIKHONOV (Union of Soviet Socialist Republics) endorsed the procedures suggested by the Chairman and said he hoped that genuine progress would be made towards a solution that was generally acceptable to all States represented in the Committee.

29. Mr. LEITZELL (United States of America) said that the procedures outlined by the Chairman were generally acceptable to his delegation; he welcomed the desire for flexibility, since those procedures might have to be amended as the negotiations progressed.

30. His delegation was prepared to work on the basis of the single negotiating text, but agreed that considerable discussion of it was required before a consensus could be reached. He was pleased that the intersessional work on Third Committee matters would be taken into account and that every effort would be made to accommodate requests for informal consultations, in which all delegations should be able to make their views known.

31. Mr. BRENNAN (Australia) agreed that flexibility was necessary. However, as he interpreted the Chairman's remarks, there were two working procedures regarding which there was no scope of flexibility. First, the single negotiating text, which he considered most commendable, was the sole basis for negotiation; secondly, the principal vehicle for negotiations in the Committee would be the two working groups of the whole, presided over by the representatives of Mexico and the Federal Republic of Germany. Delegations could be at liberty to propose amendments to articles or groups of articles, but it was essential that any amendments should not replace the single negotiating text as the basis for negotiation unless and until the Chairman indicated at a formal meeting that he wished to replace that text with another official one. A great deal had been secured in the intersessional period by the work of groups. It was imperative that their achievements be not lost. Groups could continue to meet and submit proposals if they wished but their proposals would not displace the single negotiating text as the basis for negotiation and the informal meetings of the working groups of the whole should have priority in the allocation of conference servicing facilities.

32. The CHAIRMAN said that, to avoid any misunderstanding, he wished to reiterate that the single negotiating text was not a negotiated text, but a basis for negotiation. To replace it at any stage by alternative parallel texts would be retrogressive. Informal amendments put forward by delegations must not constitute alternatives.

33. At some stage he might undertake negotiations himself. However, he would seek the advice of the Committee before doing so; at the current stage, the negotiations should proceed in the two working groups of the whole. The Committee would be free to amend its procedures if necessary.

34. Mr. LANCHIN (United Kingdom) said that the consensus in favour of firmness and flexibility which had emerged in the discussion augured well for the Committee's work. His delegation undertook to work towards an agreement on a text that represented the widest possible consensus.

35. Mr. FIGUEIREDO BUSTANI (Brazil) said it was his delegation's understanding that, while the single negotiating text was the point of departure for the Committee's work, there would be sufficient flexibility to allow changes in the approach and, if necessary, in the structure of the text, some provisions of which created difficulties for his delegation. Some matters dealt with in the text had not been discussed at earlier sessions, and the work accomplished in the intersessional period and any amendments that might be submitted must be taken into account.

36. The CHAIRMAN said that the basic requirements were good faith and the desire to elaborate a convention. He assured the Committee that he would spare no effort to strive for an atmosphere conducive to proper negotiations. He urged a spirit of accommodation and respect for each other's position, with a view to achieving a generally agreed formula.

37. Mr. KOLCHAKOV (Bulgaria) endorsed the procedures suggested by the Chairman and welcomed his call for flexibility. The single negotiating text should be the basis for the Committee's work.

38. Mr. NDOUME AZABOUDE (United Republic of Cameroon) said that he fully agreed with the procedures outlined by the Chairman; the single negotiating text should be the basis for the Committee's work. He also welcomed the emphasis placed on flexibility.

39. Mr. GÜVEN (Turkey) expressed his satisfaction with the clarifications given by the Chairman to the representatives of Peru, India, Iraq and Australia.

40. Mr. LEGAULT (Canada) said that, while he agreed that nothing should replace the single negotiating text as such, some of its individual provisions should be replaced once the task of revision was undertaken. Furthermore, the work accomplished during the intersessional period was very important and must be taken into account.

41. The CHAIRMAN reiterated that the single negotiating text was an instrument to enable the Conference to arrive at a single draft convention ready for signature. The single negotiating text was not sacrosanct, was not an end in itself and was open to improvement.

42. The consensus which had emerged on the guidelines for the organization of the Committee's work and the conduct of the negotiations could be credited to the understanding and goodwill of all delegations.

*The meeting rose at 5.30 p.m.*