

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/L.12/Rev.1

Note by the President of the Conference

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fifth Session)*

DOCUMENT A/CONF.62/L.12/Rev.1

International non-governmental organizations invited to participate with paragraph 3 of General Assembly resolution 3025 (XXVII) and paragraph 8 of General Assembly resolution 3167 (XXVIII)

[Original: English]
[2 August 1976]

THE FIFTH SESSION, 1976, of the Conference convened for the purpose of the elaboration of an *integrated non-governmental organizations treaty* commenced on 1 August 1976. The Chairman of the Conference, in his introductory note, stated that the Conference would be conducted in accordance with the above-mentioned General Assembly resolutions and in conformity with the Rules of Procedure.

Contents:

United World Alliance
United Conference on the Law of the Sea

DOCUMENT A/CONF.62/L.12/Rev.1

Note by the President of the Conference

[Original: English]
[2 August 1976]

1. During the closing stages of the fourth session, I suggested that at the fifth session delegations should initially concentrate, in their negotiations, on the key issues. Agreement on such issues should substantially promote progress towards a generally acceptable treaty.

2. The suggestions that follow, in regard to what I consider to be the key issues, are subject to modification by the committees themselves. I would not presume to claim for them the character of an *ipse dixit*. The chairmen of the committees have, in presenting the first three parts of the revised single negotiating text,² made certain introductory observations which give a clear notion of those issues which, in the course of the informal negotiations that have taken place so far, have impressed them as being the principal issues on which agreement should primarily be sought. It should not be necessary for the plenary to have any discussions regarding the relative importance of particular issues or the absence from the list that follows of issues which, in the opinion of certain delegations, deserve to be treated as key issues. This question could best be disposed of in the committees themselves without a protracted procedural debate.

3. From the discussions, consultations and negotiations which have taken place so far and from the introductory observations of the Chairmen of the three committees, it is evident that there are at least six main areas, broadly speaking, on which delegations should specially concentrate in their informal consultations and negotiations during the fifth session. They are the following:

(a) The structure of the proposed International Sea-bed Authority; the financial arrangements for the maintenance of the Authority and its activities; the basic conditions governing exploration and exploitation of the sea-bed resources and the measures required to prevent or mitigate the adverse consequences to the economies of developing countries that may result from sea-bed mining;

(b) The accommodation of the interests and concerns of those countries whose peculiar geographical location might, for want of such accommodation, deprive them of any real benefit from the establishment of an exclusive economic zone or of a fair share in the "common heritage of mankind";

(c) The precise legal relationship between the concept of the exclusive economic zone and the doctrine of the high seas at present understood;

(d) The régime to be applied to marine scientific research in all areas outside the territorial sea;

(e) A viable mechanism for the compulsory settlement of disputes designed to ensure finality; and

(f) The formulation of final clauses which would preserve the legal unity of the convention.

4. Within the general framework referred to in the preceding paragraph, the specific issues which would form the core of the new convention may best be divided into four groups corresponding to the various parts of the negotiating text:

Part I—First Committee subjects

Part II—Second Committee subjects

Part III—Third Committee subjects

Part IV—Settlement of disputes.

PART I—FIRST COMMITTEE

5. As the Chairman of the First Committee has stated in his introductory note to the revised single negotiating text, part I, there are certain questions which have been the subject only of a preliminary exchange of views. The provisions in regard to them require different treatment from questions which have been the subject of negotiation and in regard to which the revision of the original text was appropriate. They are:

(a) Basic conditions of prospecting, exploration and exploitation—annex I;

² See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. 3.76.V.8), document A/CONF.62/WP.8/Rev.1.

(b) The statute of the Enterprise—annex II;

(c) The statute of the sea-bed dispute settlement system—annex III;

(d) Special appendix on financial arrangements in regard to which two sets of proposals, described as "Approach A" and "Approach B", have been presented by the Chairman.

6. Apart from these, the key issues in the First Committee are:

(a) The powers and functions of the Authority in regard to control or regulation of activities in the area (articles 9 and 21 and annex I);

(b) The organs of the Authority and their respective powers and functions (articles 24-28);

(c) Finance (articles 46-51).

7. As regards the other proposed principal organ of the Authority, namely the Tribunal (articles 33-40), and the statute of the sea-bed dispute settlement system (annex III), there is a clear need for taking an early decision on the question whether there should be a separate tribunal for the settlement of disputes affecting the international sea-bed area or one single dispute settlement system, the text of which appears as part IV of the negotiating text.³

8. In finding a satisfactory formulation regarding the financial arrangements between contracting parties and the Authority, due account must be given to the need to reconcile the contractors' expectation of a reasonable profit over a predictable period of time and the necessity to ensure that activities in the area will give the Authority financial and technical benefits that would give form and substance to the concept of the common heritage of mankind. The means of financing the Enterprise would be contingent upon a solution to the problem of the financial structure of the Authority.

9. The economic implications of sea-bed mining are a matter of vital importance, especially where the marketing of minerals derived from sea-bed mining would have disruptive effects on the economies of developing countries which are heavily dependent for their foreign exchange earnings on the export of the same type of minerals or substitutes. Appropriate measures would have to be considered in the framework of proposals for production control and for global arrangements, to which the Authority would be a party, for commodity price stabilization and a scheme of compensation in situations of chronic instability.

10. A proper balance must be struck between the powers and functions of the Assembly and those of the Council. The closest analogy is that between the supremacy of a national legislature, which preserves the principle of popular representation, and the independence of the executive, in the interests of efficient management and operation, which shelters technocratic competence from political pressure. The procedural arrangements designed to ensure that decisions by the two bodies will be taken after a period of reflection and negotiation seem to be an essential component of a basic agreement on the issues which the First Committee has to face.

PART II—SECOND COMMITTEE

11. The key issues are:

(a) Definition and status of the exclusive economic zone (articles 44 ff.);

(b) Delimitation of the exclusive economic zone and the continental shelf between adjacent or opposite States (articles 62 and 71);

(c) Definition of outer limit of continental margin (a complex technical issue already raised but not discussed in detail or covered by article 64);

(d) Rights of land-locked and geographically disadvantaged States to participate in the exploitation of the living resources of the exclusive economic zone (articles 50, 51, 58 and 59);

(e) Rights and duties of coastal States and other States (articles 44, 46, 47, 75 and 76);

(f) Revenue-sharing in respect of exploitation of the continental shelf beyond 200 miles (article 70);

(g) Straits used for international navigation (articles 16, 33, 37 and 43);

(h) Right of access to and from the sea and freedom of transit (article 110).

The exclusive economic zone

12. A compromise must be reached on the contentious issue whether or not the exclusive economic zone should be included in the definition of the high seas or be treated as a zone *sui generis*, being neither high seas nor territorial sea. The unique nature of the exclusive economic zone concept makes it imperative that the provisions governing the exercise of rights and the fulfilment of duties within it be as explicit as possible. The coastal States' interests and rights would have to be reconciled with the claims of land-locked and geographically disadvantaged States.

13. On the other hand, the special character of this new legal concept calls for a clear distinction to be drawn between the rights of the coastal State and the rights of the international community in the zone. A satisfactory solution must ensure that the sovereign rights and jurisdiction accorded to the coastal State are compatible with well-established and long recognized rights of communication and navigation which are indispensable to the maintenance of international relations, commercial and otherwise.

PART III—THIRD COMMITTEE

14. General provisions regarding:

(a) Vessel source pollution;

(b) Régime for marine scientific research;

(c) Transfer of technology.

15. Questions relating to the jurisdiction, rights and duties of the coastal State in the territorial sea as well as in the exclusive economic zone, both in regard to prevention of pollution and marine scientific research, would require to be determined in close consultation between the Second and Third Committees.

16. The powers, functions and responsibilities of the International Sea-bed Authority and the rights and duties of States in regard to scientific research, transfer of technology and the protection of the marine environment so far as the international sea-bed area is concerned would come within the First Committee's purview and would necessitate co-ordination and consultation between the Chairmen of the three Committees.

Régime for marine scientific research

17. The new régime must afford full protection to the economic interests of the coastal State but obviate undue

³*Ibid.*, document A/CONF.62/WP.9/Rev.1.

interference with scientific research in the exclusive economic zone that would neither prejudice the interests nor infringe the essential rights of the coastal State. The question is whether scientific research is to be subject to a consent régime, duly balanced with the obligations of the coastal State not to withhold its consent unless the research project damages the interests or interferes with the rights of the coastal State concerned. If the right to regulate scientific research is claimed to be an integral part of the new concept of the exclusive economic zone, it should carry with it the obligation to co-operate in the expansion of man's knowledge of the seas.

PART IV—SETTLEMENT OF DISPUTES

18. Unlike parts I, II and III which appear as a revised single negotiating text, part IV on settlement of disputes has not yet been subjected to the process of preliminary consultation and negotiation. It is therefore, premature to attempt to identify the key issues.

General observations

19. Negotiations on the key issues arising within the three committees will have to be conducted with a clear understanding of the arrangements to be made for the settlement of disputes. Agreement on issues concerning sea-bed exploration and exploitation is clearly contingent upon the establishment of a system to settle disputes between the Authority and contracting parties, be they State or private, natural or juridical persons.

20. The real nature of the exclusive economic zone would be easier to define if appropriate provision were made for the settlement of disputes in the exclusive economic zone, especially if the final convention were to grant specific substantive rights to States other than the coastal States within that zone.

21. The provisions covering the settlement of disputes outside the exclusive economic zone may not be unduly controversial. On the other hand, in regard to the settlement of disputes within the exclusive economic zone, a balance has to be found between the rights of the coastal State and the rights and interests of the international community.

Preamble and final clauses

22. Finally, I should like to draw attention to the debate on the preamble and final clauses which ought to be held during the first weeks of the next session. It may be noted that General Assembly resolution 3067 (XXVIII) calls for one convention dealing with all matters relating to the law of the sea, bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole, a proposition which was clearly enunciated in General Assembly resolution 2750 C (XXV) in which the Assembly decided to convene the Third United Nations Conference on the Law of the Sea.

23. In taking this decision, the General Assembly, in resolution 2750 C (XXV):

(a) Noted that the political and economic realities, scientific development and rapid technological advances of the

decade of the 1960s had accentuated the need for early and progressive development of the law of the sea, in a framework of close international co-operation;

(b) Paid regard to the fact that many of the present States Members of the United Nations did not take part in the previous United Nations conferences on the law of the sea;

(c) Expressed its conviction that the elaboration of an equitable international régime for the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, would facilitate agreement on the questions to be examined at such a conference; and

(d) Affirmed that agreements on these questions should seek to accommodate the interests and needs of all States, whether land-locked or coastal, taking into account the special interests and needs of the developing countries, whether land-locked or coastal.

24. In regard to the final clauses and, specifically, the questions dealing with participation in the convention, entry into force, reservations and, perhaps, provisional entry into force, attention would need to be paid to the preservation of the unity of the convention and the balance of rights and duties of all States, whether land-locked or coastal, both within the national jurisdiction of any coastal State and in the area that has been designated the common heritage of mankind.

25. A significant feature of the Third United Nations Conference on the Law of the Sea, as distinct from the other areas of United Nations activity, is the divergence of interests between States which are members of the geographical and other groups that normally function within the United Nations system.

26. On economic issues the demarcation hitherto has, by and large, been between three main groups, namely:

(a) The developed market economies;

(b) The socialist group of countries with centrally-controlled economies; and

(c) The developing countries which are associated in the Group of 77.

27. As regards the problems of the law of the sea, however, there is no absolute community of interest on many key issues, even among the members of any of these wider groups. A new and substantial group has emerged in the form of the land-locked and geographically disadvantaged countries where the division between the developed and the developing countries has been superseded by the need for joint action mainly for the purpose of ensuring access to the sea and the means of obtaining a legitimate share of the common heritage of mankind. Members of the Socialist group are also included in the group of land-locked and geographically disadvantaged States. The concept of the exclusive economic zone has brought into being a group of coastal States which includes both developed countries and developing countries.

28. Old ties have become blurred in the pursuit of new interests.

29. The negotiations during the forthcoming fifth session will be the most crucial stage of this Conference. They will prove to be a severe test of diplomatic acumen, international goodwill and political vision.