

REPORT
OF THE
UNITED STATES DELEGATION
TO THE
THIRD UNITED NATIONS CONFERENCE ON LAW OF THE SEA
ORGANIZATIONAL SESSION
NEW YORK, NEW YORK
December 3-15, 1973

The inaugural session of the Third United Nations Conference on the Law of the Sea took place December 3-15, 1973 in New York. The session was devoted to matters of Conference organization and procedure, including the election of officers, adoption of the agenda and Rules of Procedure.

The session marked the opening of formal law of the sea negotiations following three years of preparatory work. The 25th UN General Assembly (1970) had decided to convene the Law of the Sea (LOS) Conference in 1973 and designated as the preparatory body its Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction. The Seabed Committee subsequently held six preparatory sessions, the final meeting in the summer of 1973.

The 27th General Assembly (1972) decided to convene two Conference sessions, with provision for additional work, if necessary. The first session was scheduled for two weeks in November/December 1973, to be followed by an eight-week substantive session in Santiago, Chile in the spring of 1974.

The 28th General Assembly on November 16, 1973, fixed December 3-14, 1973 as the dates for the first (organizational) session of the LOS Conference. It also expanded the second (substantive) session to 10 weeks -- from June 20-August 29, 1974 -- and changed its venue from Santiago, Chile to Caracas, Venezuela.

[Omitted here are eleven pages listing members of the U.S. delegation, Conference officers, and countries represented in all Conference committees.]

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WORK OF THE CONFERENCE

The first session of the Third United Nations Law of the Sea Conference resulted in adoption of an agenda, agreement on committee structure and election of Conference officers and committee representatives. Agreement on Conference Rules of Procedure was not completed.

Opening of the Conference

The U.N. Secretary-General, Kurt Waldheim, opened the LOS Conference, conveying his recognition of the critical importance of its work and his hopes for its success. Pursuant to the Secretary-General's proposal, the Conference elected its President, H.S. Amerasinghe of Sri Lanka, by acclamation. Ambassador Amerasinghe had served as Chairman of the U.N. Seabed Committee since its establishment.

Ambassador Amerasinghe secured adoption of the Conference agenda on a no-objection basis and proposed that the Conference consider first the related issues of electing officers and establishing committees, followed by consideration of the Rules of Procedure. He sought to obtain consensus on these matters through informal consultations among the regional groups. To that end, he held frequent meetings with the chairmen of the five regional groups -- African (AF), Asian (AS), Latin American (LA), Eastern European (EE), and Western European and Other (WEO) -- along with the U.S. Representatives.

Election of Officers and Establishment of Committees

The informal consultations under Ambassador Amerasinghe's guidance reached agreement on the establishment of the following Conference structure: A General Committee, a Drafting Committee, three Main Committees -- corresponding to the three Subcommittees of the Seabed Committee -- a Credentials Committee and a position of Conference Rapporteur General.

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Likewise, there was agreement that each Main Committee would have a Chairman, three Vice Chairmen and Rapporteur, each from a different regional group. Chairmanship of Committee I was assigned to the African Group, of Committee II to the Latin American Group, of Committee III to the Eastern European Group and of the Drafting Committee to the Western European and Other Group. Main Committees were to be open-ended in composition and the Credentials Committee was to consist of nine members -- based on the U.N. General Assembly model.

Tentative agreement emerged on a 48-member General Committee and a 23-member Drafting Committee. Serious disagreement, however, arose over the allocation of seats on the General and Drafting Committee among the regional groups. A principal issue was whether and how to accommodate United States candidacies for both the General and Drafting Committees. The African, Asian, Latin American and Eastern European regional groups agreed that the U.S. should be counted in the Western European and Other quota of seats, with the understanding of their regional Chairmen, shared by most members of their respective groups, that the U.S. should be represented on both Committees. The Western European and Other Group pointed that the U.S. had not been treated as a member of their group in the past and that accommodating the United States would place the Western European and Other Group below parity with other regional groups.

The United States agreed that it was not a member of the Western European and Other Group and sought seats on both Committees in keeping with established practice in the United Nations General Assembly and at previous international conferences. Some States were, however, opposed to what they termed the "automatic" inclusion of permanent Security Council members on important bodies and the Peoples Republic of China introduced a formal proposal that no State participating in the Conference had the right to dual representation. In this case this meant that no State had a right to be on both the General and Drafting Committees.

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Protracted consultations over the impasse on the allocation of seats continued until December 12. Ambassador Amerasinghe then resolved the dual representation issue by obtaining agreement to the following formula: "No State shall as of right be represented on more than one main organ of the Conference." (Emphasis added).

The Conference also accepted a proposal, from a suggestion by the Canadian Representative, that the Chairman of the Drafting Committee not -- as originally envisaged -- be a member of the General Committee. This proposal created a vacancy in the Western European and Other quota on the General Committee which could be used to accommodate the U.S.

Even so, the Western European and Other Group could not achieve a consensus on a slate of candidacies for the Vice President positions assigned to it and the United States. Voting by secret ballot, therefore, took place on the following eight candidacies for the six positions: Norway, Belgium, France, the United Kingdom, Iceland, Italy, Greece and the United States. The results of the voting were: France-109(elected), The United States-107(elected), Norway-104(elected), Belgium-100(elected), the United Kingdom-99(elected), Iceland-96(elected), Italy-95(not elected), Greece-73(not elected).

Prior to the voting on the Vice Presidencies, the representatives of the United Kingdom and France announced their intention to withdraw their candidacies for the Drafting Committee if elected as Vice Presidents. Their withdrawal left the United States, Canada, Italy, Spain and the Netherlands as the only candidates for the five positions allocated to the Western European and Other Group plus the United States on the Drafting Committee. The five candidates were therefore elected by acclamation.

In addition to the Conference President, the principal Conference Officers elected were: Mr. Paul Engo (Cameroon), Chairman of Committee I; Ambassador

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Andres Aguilar (Venezuela), Chairman of Committee II; Ambassador Alexander Yankov (Bulgaria), Chairman of Committee III; Mr. Kenneth Rattray (Jamaica), Conference Rapporteur General; and Ambassador Alan Beesley (Canada), Chairman of the Drafting Committee. All were elected by acclamation except Ambassador Beesley who was elected by a margin of 81 to 54 votes over Ambassador Ralph Harry of Australia. A complete list of Conference Officers is included in the section on Conference Organization above.

Rules of Procedure

The time required to resolve the committee allocation dispute left only two days -- later extended to three -- to consider the Rules of Procedure. Given the number of issues raised by the Rules and the disparity of view on them among Conference participants, their adoption prior to the conclusion of the first session proved impossible.

Draft Rules for consideration by the Conference had been prepared by the United Nations Secretariat. The Secretariat had drawn upon rules employed at previous international conferences, but included several innovations designed to restrain the abuse of power by the majority, such as provisions to prevent premature voting. Formal amendments to the draft Rules of Procedure were tabled by a number of participants, including the United States. The United States amendments call for voting majorities -- whether simple or two-thirds -- to be of "Representatives of States participating in the Conference" rather than of Representatives "present and voting". The draft Rules of Procedure and the amendments to them tabled during the first session are attached as an Annex.

An issue equal in importance to the formal Rules was the execution of a "Gentleman's Agreement" that had been adopted by the United Nations General Assembly concurrently with the Conference resolution. The Gentleman's Agreement stated:

"Recognizing that the Conference at its inaugural session will adopt its procedures,

"including its rules regarding methods of voting and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance;

"The General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end."

Disagreement arose both over the formal voting provisions in the Rules and over treatment of the Gentleman's Agreement. Some developing countries, led by Chile, Colombia and Tanzania, argued that the Law of the Sea Conference should operate under the "classic" conference voting arrangements -- simple majority in Committee and two-thirds in Plenary -- and sought deletion from the draft Rules of many, though not all, of the devices designed to prevent abuse by the majority. At the other extreme, the Soviet Union pressed for Conference decisions by consensus, with a nine-tenths majority required in Plenary, if formal voting were necessary. The Soviets proposed a requirements of concurrence by all regional groups before proceeding to such formal voting.

The meaning of the Gentleman's Agreement itself was a source of controversy. Tanzania, apparently speaking for a number of States, argued that the adoption of the Rules of Procedure would execute the Gentleman's Agreement and terminate its existence. The United States, among others, maintained that the Gentleman's Agreement was clearly intended to be applicable throughout the Conference and strongly urged its re-endorsement in a form of a separate Conference resolution.

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Finally, Conference participants were split over how to adopt the Rules of Procedure. Most delegations, supported by the Conference Secretary-General (United Nations Legal Counsel Stavropoulos) advocated their adoption by a simple majority. The United States, the United Kingdom, France, the Union of Soviet Socialist Republics and Japan disagreed, urging that the importance of the Rules for the eventual success of the Conference required their approval by a majority as close to consensus as possible.

Intensive efforts at compromise were pursued up to the last moment, and some narrowing of differences over the Rules of Procedure and the Gentleman's Agreement was achieved. Time ran out, however, before these efforts were successful.

Faced with the impossibility of extending the session beyond December 15, Ambassador Amerasinghe closed the session and secured agreement to the following proposal for future work:

(a) That he, as Conference President, would hold informal consultations with sponsors of amendments and other interested representatives to further seek consensus on the Rules of Procedure from February 25 to March 1, 1974, with further consultations of this nature to be held if necessary.

(b) That additional amendments to the Rules, if any, should be submitted by January 31, 1974;

(c) If the informal consultations result in agreement on the Rules, that such agreement be put to the second session of the Conference in Caracas for endorsement.

(d) That, whether or not consensus is achieved on the Rules of Procedure, there be a deadline of June 27, 1974, for their adoption, if necessary by a formal vote.

The Conference accepted Ambassador Amerasinghe's proposal on a no-objection basis. It also agreed to an

Argentine proposal that the United Nations General Assembly Rules of Procedure apply to the adoption of the Conference Rules, if a vote becomes necessary in Caracas. These Rules specify a simple majority for the adoption of Conference Rules, unless the Conference decided -- equally by a simple majority -- to designate the matter as an important question requiring a two-thirds majority for approval. The United States and France warned of the implications of adopting the Conference Rules of Procedure by only a simple majority. Ambassador Amerasinghe, however, noting that only several delegations were opposed to the Argentine proposal stated his intention to put the matter to a vote if necessary. He thereby obtained Conference approval for the use of the General Assembly Rules of Procedure until the Conference agrees on its Rules.

FUTURE MEETINGS

As indicated above, the Conference President Amerasinghe will hold informal consultations on the Rules of Procedure in the period prior to the second session of the LOS Conference. The second (substantive) session of the Conference will take place in Caracas June 20-August 29, 1974. Depending upon the outcome of the informal consultations starting the last week in February, all or part of the first week of the Caracas session will be devoted to final adoption of the Rules of Procedure.

CONCLUSIONS

From the perspective of the United States, the results of the first session of the Third United Nations Conference on the Law of the Sea were mixed. The delegation believes that the Conference selected excellent leadership in the Conference President, Committee Chairmen and Rapporteur General. Officers of this calibre can make a major contribution to the success of the Conference.

The United States attained its objective of membership on both the General Committee and the Drafting Committee. The difficulty in achieving this result stemmed

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not so much from opposition to the United States as from disagreement over the method of accommodating our position. The manner in which the issue was resolved, however, indicates that the status of the five permanent members of the Security Council and the United States relationship to the Western European and Other Group will likely be controversial issue at future international conferences.

The United States consistently worked for the convening of an early Conference and it was disappointing that insufficient time remained after resolution of the committee allocation issue to permit adoption of the Rules of Procedure. At the same time, Ambassador Amerasinghe's plan for future work on the Rules of Procedure is clearly preferable to what would have been a premature and confused vote on that issue under the stress of the final day of the session.

UNITED STATES DELEGATION RECOMMENDATIONS

The delegation recommends that every effort be made to facilitate agreement on the Conference Rules of Procedure prior to the opening of the second session of the Conference. Satisfactory resolution of the Rules of Procedure issues prior to the Caracas session would not only make more time available for substantive work there, but also could contribute to a productive atmosphere for the start of substantive negotiations.