DECISION MAKING AT THE LAW OF THE SEA CONFERENCE

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The history of international organizations remains a relatively underdeveloped field of study. There are, of course, overall summaries of international institutions, as well as works dealing with the development of individual bodies, but the topic as such has not become established so as to occupy an accepted place in its own right. Some of the main reasons for this are evident : the limited period that international organizations have existed and the different areas with which they are concerned, which make it difficult to arrive at general conclusions. There is also the gap, particularly if the study is based largely on the printed record, between the formal aspects — the constitution and internal rules of the organization — and the political considerations determining what use is actually made of the powers given to the organization. The synthetising spirit, the Burckhardt, who can put together the different elements, has yet to appear. Even in the absence of any broadly based doctrine, however, it is clear that the evolution of international organizations is closely linked to that of their system of decision making : what international organizations do, in a substantive sense, follows closely from the process by which decisions, may or may not be taken, as the case may be. The following notes from the contemporary scene do not constitute an examination of all the skirmishes and of all the evidence that could be cited, but describe one major set piece, which required much effort to be constructed at all, and, like all procedural issues, reveals something of the underlying structure.

In the case of bilateral relations the process by which two States reach agreement is normally that of negotiation, broadly comparable to the way in

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which two persons or companies operating in a market economy may decide to do business with one another. The move towards international meetings on a larger scale — first multinational conferences, then organizations — put the matter in a different perspective. The initial procedures were based on a simple model of state sovereignty : since all States were equal and none could legally be bound against its will, unanimity was required. As organizations became more permanent and less concerned with formal treaty-making, the need to escape from the limitations of this rigid approach came to the fore and recourse was had to systems of majority voting. This trend away from unanimity was widely regarded as indicating a movement towards a more democratic rule of law among States. Despite its attractions, however, such an argument has always contained some inadequacies. What could « democratic rules » mean as regards the votes of States varying so greatly in size, strength and population ? The principle of human equality can be based on ethical principles, but the notion of the equal treatment of States has a similar value only insofar as it implies that the peoples concerned are to be free from the interference of others. There is, furthermore, the critical element that whereas a formal rule may exist — « one State, one vote » — in political terms votes in international organizations must be weighed as well as counted in determining the outcome. Nevertheless, in pursuit of the general trend and given the difficulty, if the « one State, one vote » rule is abandoned, of determining what arrangement should replace it, the United Nations adopted the system which, within broad limits, is to be found in most other universal bodies : a plenary organ, in which all States are equally represented, and an organ with direct executive powers, composed of a limited number of States. At the time when the United Nations was established this basic structure of General Assembly and Security Council appeared sufficient. The Security Council with its five permanent members and its other members elected at large was to take decisions on war and peace issues, and the General Assembly was to discuss all matters of international interest and to adopt resolutions in their regard.

Although this structure has managed to survive nearly thirty years, this period has witnessed a considerable evolution; an actual practice has developed, related to but distinct from the formal rules. As a body engaged in day-to-day politics the United Nations has come to work primarily through negociations conducted by a series of groupings, chiefly but not solely regional in character. While the process of reaching agreement within and between such groups has become established as the main foundation on which the United Nations operates, the question which has presented itself with gathering force over the last ten years — and with increasing speed and emphasis over the last two years — has been how the system of nominal majority voting which has been maintained was to be reconciled with the task of ensuring the effective association with the results arrived at of the States likely to find themselves in a minority — the most obvious minority group being the thirty to forty developed countries, including

the United States, the members of the European Community, the U.S.S.R. and Japan.

A full account of the response given to this problem would run to considerable length. This article is concerned only to sketch the broad history of the matter and to describe the most recent — and most striking — example of the evolution of the international decision making process, namely that adopted within the framework of the Law of the Sea Conference. At its second session held in Caracas between 20 June and 29 August 1974, the Conference reached agreement on a set of rules of procedure which, though based on those of the General Assembly and of previous United Nations codification conferences, differ from them in three major respects : the introduction of a « cooling-off » period between a request for a vote on a question of substance and actual voting; the requirement that before proceeding to a substantive vote an express determination shall be made that efforts, normally informal, to reach general agreement have been exhausted; and the definition and size of the majority required if the Conference should proceed to a vote. The unifying element of the changes is their stress on the importance that decisions should be reached which command general support and the degree of recognition given to the need that informal negotiations be held in order to achieve this purpose. The rules may indeed be regarded — and hence their significance — as an attempt to provide an ssured place for the hitherto formally unrecognized process of achieving a consensus on major issues, while still maintaining the possibility of proceeding to a vote [1].

[1] A consensus may be defined in terms of United Nations practice as a general agreement on a topic which those opposing, or who cannot give the proposal their full support, are nevertheless prepared to allow the body concerned to adopt without recourse to a vote. Reservations or qualifications, defining the understanding on which the matter is accepted or allowed to pass without formal objection may, however, be recorded in the written proceedings or report of the organ. The adoptions of decisions on the basis of a consensus is thus to be distinguished from the adoption of decisions by voting, although, as the Law of the Sea Conference rules show, efforts to reach general agreement may form part of a body of rules that include voting if such efforts fail, and, of course, it is by no means inconceivable that a vote may be held to endorse a decision on which a general agreement has been reached; the practice of adopting General Assembly resolutions « without objection » may be noted here — the essential issue which is presented in this connexion being that of finding a means whereby the body concerned may give its formal, public endorsement to the results which have surfaced from unofficial discussions. A distinction is also to be drawn between the establishment of a consensus on a topic and the adoption of a decision by unanimity (or « by acclamation ») which, though sometimes referred to as if interchangeable with consensus, means that the decision has the positive support (as opposed to the *nihil obstat*) of all.

The definition given above of a consensus within the United Nations system is separate from the question of the legal effect of such a consensus, which depends on the context and subject-matter concerned. More generally, the formation of a consensus within an international organization may be distinguished from the role of consensus as showing that an international customary rule has been established, although there is a clear general tendency for

I. THE PRECEDENTS

While the solution adopted for the Law of the Sea Conference depends in part on the particular character of the subject-matter, there are immediate links with United Nations practice in other spheres. The preparation for the Conference Was undertaken by the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor beyond the limits of National Jurisdiction (the « Sea-Bed Committee ») which, from 1968 on, proceeded on a basis of consensus, in conformity with contemporary United Nations practice. The actual rules of procedure of the General Assembly provided — as they continue to provide — for the adoption by the General Assembly of decisions on important questions by a two-thirds majority of the States members present and voting, a simple majority being sufficient for other questions and in the case of committees [2]. At the 1958 and 1960 Law of the Sea Conferences and at the successive codification Conferences on Diplomatic and Consular Law and on the Law of Treaties the same provisions were applied, *mutatis mutandis,* as in the Assembly : a two-thirds majority for substantive devisions in plenary sessions and an ordinary majority at the committee stage. The 1960s, however, saw a number of developments as regards the actual operation of several United Nations bodies, in particular in the case of those which were established to consider specific topics; the Main Committees of the General Assembly [3] continued for

the two to be drawn together. One of the issues in the present discussion has been precisely whether, and if so under what terms, the developed countries are prepared to allow this movement towards convergence to continue.

There is a considerable literature of the subject of consensus. Reference may be made to the following : BASTID, S., « Observations sur la pratique du consensus », *Multitudo Legum Ius Unum, Sssays in Honour of W. Wengler,* vol. I, 1973, p. 11; CHAI, F., « Consultation and consensus in the Security Council », *UNITAR,* 1971; DE LACHARRIÈRE, G., « Consensus et Nations Unies », *Annuaire français de droit international,* 1968, p. 9; JENKS, C.W., « Unanimity, the Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organizations », *Cambridge Essays in International Law : Essays in Honour of Lord McNair,* 1965, p. 49; and STAVROPOULOS, C.A., « Procedural Problems of the Third Conference on the Law of the Sea », *UNITAR News,* vol. 6, no. 1, 1974, p. 16.

[2] Rules of Procedure of the General Assembly, *A/520/Rev. 12,* rules 82 to 95 (General Assembly) and 124 to 133 (Committees). Rules 82, 83 and 85 reproduce the three paragraphs of Article 18 of the Charter. The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly, which was set up in 1970, took note of the adoption of decisions and resolutions by consensus, a practice that it considered desirable « when it contributes to the effective and lasting settlement of differences », but emphasized that « the right of every Member State to set forth its views in full must not be prejudiced by this procedure », Report of the Committee, *G.A.O.R.,* Twenty-sixth Session, Suppl. no. 26 (A/8426), § 289 and Conclusions, *ibid.,* § 104. In consequence no change was proposed in the General Assembly rules.

[3] I.e. the First to Sixth Committees and the Special Political Committee (rule 98 of the Rules of Procedure). The use of consensus during the nineteenth session of the General Assembly was a special case, dependent on the particular circumstances.

the most part to have recourse to voting. The three main instances where changes were introduced are, respectively, the United Nations Conference on Trade and Development (U.N.C.T.A.D.), the Committee on the Peaceful Uses of Outer Space, and the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States (the « Friendly Relations Committee »). Each of these forerunners influenced the 1974 law of the sea decision — with the relatively small number of people involved and the overlap in membership it could scarcely be otherwise — and each sheds some light on the nature of the problems which confronted the Law of the Sea Conference.

In the case of U.N.C.T.A.D., which constituted an ambitious attempt to breathe new life into economic development efforts, provision was made in General Assembly resolution 1995 (XIX) of 30 December 1964, whereby the Conference was established as a permanent body, for a process of conciliation to take place before voting, the object of this process being « to provide an adequate basis for the adoption of recommendations with regard to proposals of a specific nature for action substantially affecting the economic or financial interests of particular countries »[4]. The U.N.C.T.A.D. precedent, though no formal use has been made of it in practice, reflected the demand of the developed countries that the powers of the new organ should not be exercised by the automatic voting majority of the developing countries without the possibility of restraint and a period of negociation. The Group of 77, at whose urging U.N.C.T.A.D. was to be set up, agreed to the institutionalisation of the procedure outlined as the means of securing the participation of the United States and other industrialized countries, judging this a lesser price than the consecration of another veto system or an arrangement of weighted votes.

[4] Resolution 1995 (XIX), § 25. Requests for conciliation may be made by Member States or by the President or by Chairmen. The conciliation committee which is established is to seek to bring about an agreement without recourse to voting. The good offices of the UNCTAD Secretary-General are to be utilized as fully as practicable. A process of conciliation may also be applied in respect of any proposal for a recommendation to the General Assembly which would involve changes in the fundamental provisions of resolution 1995 (XIX).

As regards voting arrangements in economic bodies, it may be noted that the 1947 United Nations Conference on Trade and Employment adopted a resolution which is a partial forerunner of the Law of the Sea Conference procedure. Since non-member States of the United Nations could not vote at the Conference, the resolution provided that decisions would, so far as possible, be reached without resort to voting. At the close of the discussion the presiding officer would, following consultations, announce the result, which would be recorded. Finally, the procedure to be followed if a vote has taken was specified. *E/CONF. 2/12*, 29 November 1947.

More generally see the article by Gold, J., « Developments in the Law and Institutions of International Economic Relations, Weighted Voting Power : Some Limits and Some Problems », *A.J.I.L.*, Oct. 1974, vol. 68, no. 4, p. 687, which contains an excellent account of the efforts to adapt the decision-making process of the International Monetary Fund.

The Outer Space and Freindly Relations Committees illustrate the tendency for consensus to become the rule where issues of particular interest to the super-powers were under discussion (East-West, as opposed to North-South issues in the U.N.C.T.A.D. case). This reflected what had long been the position of the U.S.S.R., that « sovereign equality » was of special importance where ideological questions and others of immediate concern, the U.S.S.R. were involved; for the United States it represented a change of position, part of the arrangement under which it agreed to discuss the subjects concerned (particularly the Friendly Relations item) within the United Nations. The consensus system moreover had the advantage of involving the developing countries — the third partner in the overall unwritten compact, who might thus act as arbiters, while not placing the outcome directly in their hands as immediate recourse to voting would have done. The outer space example is in fact the earliest of the « peaceful co-existence » approach. At the second meeting of the Committee, held on 19 March 1962, the Chairman stated that,

> « ... through informal consultations it has been agreed among the members of the Committee that it will be the aim of all members of the Committee and its Sub-Committees to conduct the Committee's work in such a way that the Committee will be able to reach agreement in its work without need for voting. Unless I hear any objection, I would say that the Committee agrees to this procedure which is on the record » [5].

In the absence of any objection, it was so decided. The consensus procedure has since been consistently followed by the Outer Space Committee; States which, on occasions, have wished to record their particular views or interpretations of a given decision have done so in the records of the Committee. Similarly in the case of the Friendly Relations Committee, though not without complaints from time to time [6], the practice of consensus was observed — the same system extending also to the final approval by the General Assembly of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States [7].

[5] *A/AC.105/PV.* 2. Consensus has also been observed in the adoption of General Assembly resolutions and declarations relating to outer space. Reference may also be made to the use of consensus in the Special Committee on Peace-Keeping Operations, *A/AC 121/SR 1*, 26 March 1965.

[6] See the remarks of the representatives of Kenya and Cameroon, 1969, Report of the Friendly Relations Committee, *G.A.O.R.*, Twenty-fourth session, Suppl. no. 19 (A/7619), § 207 and 210. The legislative history of the topic is given in the final Report in 1970, which also contains the statements of representatives setting out their interpretation of the texts and of their legal value, *G.A.O.R.*, Twenty-fifth session, Suppl. no. 18 (A/8018), chapter II C.

[7] Resolution 2625 (XXV), 24 October 1970.

II. THE PREPARATORY PHASE OF THE LAW OF THE SEA CONFERENCE

The precedents established in these three fields were very present to the minds of those who, in the autumn of 1967, were called upon to decide what action should be taken to deal with the future exploitation of the seabed beyond national jurisdiction. Following Ambassador Pardo's speech of 1 November 1967, the First Committee agreed that an *ad hoc* Committee should be established to study the issues involved with a view to submitting recommendations to the General Assembly. From the outest there was agreement on the need that the new body should be one whose establishment and work enjoyed general support. The reason for this was set out clearly by the representative of Venezuela.

> « The hard fact is, as we all know, that the success or failure of many of the important topics discussed here in the United Nations depends on the good will and co-operation of the more developed countries, and particularly the support of the so-called super Powers »[18].

It was in this way, he continued, that it had been possible within the framework of the United Nations to draw up the Treaty on Principles Governing the Activities of States in the Exploration and the Use of Outer Space, including the Moon and other Celestial Bodies. That agreement had been reached largely for the practical reason that even the so-called super Powers were still only at an exploratory stage as regards outer space, a factor which also applied as regards the ocean floor. The necessity that the new body should operate on the basis of consensus was stressed by both the United States and the U.S.S.R., and constituted indeed a *conditio sine qua non* for their agreement to its establishment[19].

[18] 1524th mtg., First Committee, 8 November 1967.

[19] « ... because the future regime of the ocean floor is a matter of concern to all countries, regardless of wealth, technology or geographic location, it is necessary that the principle of consensus be established from the outset. The Assembly will accomplish nothing lasting in this field if it proceeds over the strongly-held objections of a significant group of its membership. We expect the same approach which has led to such a happy conclusion at this phase will govern the deliberations of the *ad hoc* committee itself. », United States representative, 1542nd mtg., 7 December 1967. A speech in same vein was made in the General Assembly, 1639th mtg., 18 December 1967.

Similarly the U.S.S.R. representative, speaking at the 1544 mtg. on 8 December 1967, stated that it was the understanding of his delegation « that this *ad hoc* committee — as many similar bodies of the General Assembly created for the study of various problems — will adopt its decisions by agreement among its members ».

Resolution 2340 (XXII) of 18 December 1967 establishing the *Ad Hoc* Committee was adopted by 99 votes to none. The resolution was thus adopted by unanimity, not by consensus. As was explained by the Belgian representative at the 1542nd mtg. of the First Committee on 7 December 1967, the draft resolution was the outcome of informal negociations in which some 40 delegations participated before a smaller group (Belgium, Brazil, Bulgaria, India, Malta and the United States, under the First Committee Chairman) was charged with producing an agreed text. The Ad Hoc Committee consisted of 35 States.

At the first session, held in March 1968, of the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Ambassador Amerasinghe of Sri Lanka was elected Chairman by acclamation. In his initial statement he declared, in language virtually identical with that used earlier in the Outer Space Committee, that

> « He wished to place on record that, through informal consultations, it had been agreed among the members of the Committee that it would be the intention of all members of the Committee and of such subsidiary bodies as might be created to conduct their work without the need for voting. Unless he heard any objection, he would state that the Committee agreed to that common understanding which would be on record »[10].

Unlike the proceedings in the Outer Space Committee, however, this declaration did not pass without comment. The representative of Tanzania took the floor to state that in the view of his delegation

> « ... unless there were very far-reaching and compelling reasons for doing so, no organ of the General Assembly should deviate from the normal procedures of the Assembly. He was not satisfied that such reasons existed in the present case, and he could not therefore agree with the last statement made by the Chairman. He hoped that further consultations would be held on the matter before a formal decision was taken »[11].

Subsequent comments were deferred at that point and the Committee did not in fact return to the question at its official meetings. Thus from the outset of the Law of the Sea discussions there was pressure to adopt the principle of consensus, met by a counter-move that the Committee should not decide expressly to set aside the standard voting rules. The case of the sea-bed, to a greater extend than outer space, was of concern to all; to one developing country at least, and with the tacit support of others, the possibility of proceeding to a vote, if only in the last resort, was one which there were insufficient reasons to surrender — or, to put the matter in more positive terms, was too important to be formally conceded.

Nevertheless, even in the absence of an explicit decision, the *Ad Hoc* Committee proceeded in practice to conduct its affairs on the basis of consensus. It was assumed as a working hypothesis that the efforts of the Committee — notably

[10] *A/AC.135/SR 2*, 19 March 1968.

[11] *Idem*. The consistency of the position of Tanzania in the light of later discussions may benoted. For a further statement by the Tanzanian representative, see *A/AC.135/SR 7*, 26 March 1968. The remarks of the United States delegate at the same meeting included the following passage :

« In its experience with the problem of the peaceful uses of outer space, the General Assembly learned that the requirement for consensus, though not without difficulties, represents the soundest means of making effective progress. Common prudence suggests that proposals which could involve national security, essential supplies of resources and materials, orderly economic development, existing and proposed treaty provisions new international functions, and appreciable expenditures will require the broadest possible support. »

the attempt to draw up a declaration or statement of principles relating to the international sea-bed, parallel to that which had been adopted for outer space — required that all major groups should be able to support (or at least not object to) the texts produced if these were to be regarded as successful. Despite extensive informal consultations held on this basis, it did not, however, prove possible at the *Ad Hoc* Committee's summer session in 1968 to reach final agreement. It was therefore proposed that the General Assembly should be asked to make arrangements to enable further study to be made [12].

At the Twenty-third session in 1968 the General Assembly agreed to establish the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction — in effet the *Ad Hoc* Committee on a permanent basis — with a membership of forty two States. In a preambular paragraph of the resolution the General Assembly took note of the report of the *Ad Hoc* Committee « Keeping in mind the views expressed in the course of its work and drawing upon its experience » — a reference which, it was explained by the sponsors, was inserted in order to assure those who were less enthusiastic about the general trend of debate, that the future Committee would follow the same procedure as the old [13]. The major question involved, however, was that of the future declaration of principles and of the conditions required for its adoption — an issue which was to dominate much of the Sea-Bed Committee's proceedings for the next two years. As Ambassador Ruda, then the Argentinian representative, explained, his delegation

> « ... as in similar cases in the past with regard to this type of instrument... starts out from the principle that a declaration of this nature must, if possible, have the unanimous support of the Assembly, or at least a substantial majority of countries members of the international community, including more particularly the great Sea Powers and the countries that have a special interest in the sea. A body of principles having the approval of certain sectors only would not have the moral force to operate with complete efficiency » [14].

The representative of Canada was more explicit as to the relationship between the nature of the future legal régime of the international area of the sea-bed and the procedures of the Sea-Bed Committee. Closely tied to the question of the nature of the prospective régime, he stated

> « ... is an issue which appears to be merely procedural but which could have substantial implications and that is the working methods of the new standing committee and, in particular, whether or not it should proceed by consensus. The view of my own delegation is that the consensus procedure may best reflect the political realities which we must take into account. We recognize, however, that a number of delegations object to the consensus procedure, and we are

[12] Report of the *Ad Hoc* Committee, *G.A.O.R.*, Twenty-third session, A/7230, 1968.

[13] Representative of Belgium, First Committee, 1602nd mtg., 7 November 1968. See in this connexion the statement of the U.S.S.R. representative, 1648th mtg., 19 December 1968.

[14] 1594th mtg., 1 November 1968.

> prepared to abide by the majority view of this issue. We should point out, however, that when a multinational treaty is negociated it must carry with it the judgment of governments if it is to prove effective... When, therefore, the proposed standing committee moves from technical and economic considerations to matters of law purporting to regulate the conduct of States and indeed the rights of States, then at that stage we think it will prove necessary to proceed very cautiously and even perhaps by consensus »[15].

In a recorded vote the General Assembly adopted the pertinent resolution[16] by 112 votes to none with seven abstentions. The U.S.S.R. delegate, speaking in explanation of vote, made it clear, however, that the reservations of his delegation concerned the terms of the reference in the resolution to the peaceful uses of the sea-bed and to the number of places allotted to the East European Group, not to the setting up of the Committee and its functions as such; if not established by consensus, strictly defined so as to exclude a vote, the new Committee was thus based on general support.

The Sea-Bed Committee followed in the steps of its *ad hoc* predecessor : no votes were taken and decisions as to procedure, the adoption of reports to the General Assembly and so forth, were based on general agreement reached after informal consultations and meetings. The Committee did not succeed however, despite strenuous efforts, in reaching general agreement on the substantive part of its task, the preparation of a declaration of principles. There was a reluctance, an absence of political will, it was said[17], to accept the need to modify positions, while the major Powers, including the U.S.S.R. and the United States, pointed to the need for the proposed declaration, together with the treaty instrument which it was proposed to base on it, to command broad support if they were to be effective. As a negotiating mechanism the Sea-Bed Committee was thus unable to proceed when the views of major groups were firmly held — and further apart than even the most experienced and skilful diplomatic draftsmen could find common formulae to cover.

The deadlock was broken by the fact that although consensus had become the operating principle of the Committee, this did not apply to proceedings in the General Assembly (in partial contrast with outer space, where the consensus gained in the Outer Space Committee was reflected in the General Assembly). While it had been agreed — such indeed was common ground — that the broadest possible support was desirable, there had always been a reluctance, a *pudeur,* on the part of those most in favour of the consensus principle to propose that it be followed throughout General Assembly proceedings; the developing countries, for their part, although prepared to tolerate the principle, out of necessity, in certain contexts, were scarcely likely, as has been seen, to

[15] 1599th mtg., 5 November 1968.

[16] Resolution 2467 A (XXIII), 21 December 1968.

[17] See e.g. the Belgian representative, *A/AC.138/SR 10,* 29 August 1969, and the representative of Sri Lanka, *A/AC.138/SR 20,* 4 March 1970.

suggest that it replace the long accepted voting rules in the Assembly. The work of the Sea-Bed Committee thus continued on the basis that, if all else failed, the matter could be brought to the General Assembly, and, if necessary, a vote taken there. In the event, public and informal efforts within the Sea-Bed Committee to reach agreement on the declaration having been exhausted, the First Committee was seized of the question in 1970. A text representing, as was said by the Chairman, the « highest degree of agreement attainable at the present time » which, while not representing a consensus of all the members of the Sea-Bed Committee, nevertheless commanded wide support, was eventually adopted by the General Assembly by a vote of 90 States in favour, none against and eleven abstentions — resolution 2749 (XXV) of 17 December 1970[18].

In an equally important step the Assembly determined, by a vote of 100 in favour, eight against (East European countries) and six abstentions, that a Conference should be convened in 1973 to consider all law of the sea questions[19]. The Sea-Bed Committee, now enlarged to eighty six members, was charged to undertake the necessary preparations.

The task of determining how this mandate was to be exercised proved extremely difficult and much of the session in March 1971 was devoted to the question of the organization of work[20]. In the two years that followed the

[18] See statements by the Chairman of the Sea-Bed Committee, First Committee, 1773rd mtg., 25 November 1970, and by the representative of Norway, 1774th mtg. Members of the East European Group abstained.

Paragraph 9 of the resolution provides that an international régime for the area and its resources, including appropriate machinery, is to be established « by an international treaty of a universal character, generally agreed upon ». The Law of the Sea Conference includes amongst its tasks that of elaborating and adopting the treaty in question.

[19] Resolution 2750 (XXV), 17 December 1970.

[20] The main problem concerned the question, at first sight innocuous, of whether the sub-committees could proceed to make recommendations separately from one another, in particular as regards the limit (or limits) between national and international areas. Was this to be regarded as an international sea-bed matter, or as one relating primarily to the rights of coastal States ? It was decided that the plenary Committee alone should be competent to pronounce on this and on other controversial issues on which there was no common agreement. In an analysis of the reasons for the difficulty in reaching agreement Ambassador Koh of Singapore singled out three major cases : an atmosphere of mutual suspicion; the use of the consensus rule without an acceptance of the premises of accomodation and mutual give and take; and the complicated nature of the Committee's informal negotiating machinery, *A/AC.138/SR 50*, 17 march 1971. As regards the complexity of the Sea-Bed Committee's deliberations, the range of meetings was as follows : plenary (i.e. the Committee itself); three sub-committees (which might meet formally (i.e. with records) or without); working groups (without records); the bureaux of the Committee and of the sub-committees (which might meet separately or together, as a general committee); the five regional groups; the Group of 77 (i.e. the African, Asian and Latin American groups meeting together); so-called contact groups, i.e. a meeting under the Chairman of a limited number of representatives (usually five) from each regional group and a representative of the United States, and consultations held by the Chairman meeting separately with various delegations. To these

Committee adopted the List of Subjects and Issues to be considered by the Conference that the Assembly has asked it to prepare, and proceeded with the task of receiving and collating proposals. Since it was known that the Conference would shortly be held, there was no overwhelming pressure to take any final decisions : most States, however opposed their views, were agreed on the need for a general accomodation or « package deal » — having regard to the ever-increasing volume of proposals, it was in any case difficult to push for a solution on a specific issue, and even if the Committee were to reach agreement, those dissatisfied with the result might well decide to raise the matter again at the Conference. Between 1971 and 1973 therefore the Committee saw itself as a preparatory and not as a decision-making body, and its procedures remained on a consensual basis, with voting in abeyance [21].

In the course of 1973 consideration was turned, however, to the question of the procedures to be followed by the Conference itself. In April 1973 the Chairman circulated an unofficial note, containing suggestions regarding the future rules of procedure [22]. Reference was made to « stages » in voting procedures, when questions were before subsidiary committees, other than the plenary Conference itself. Discussions, both formal and informal, continued on this proposal before and during the 1973 summer session. At the concluding meetings of that session the differing views were marked out and the scope of the problem, as a matter of political and practical management, stood revealed [23]. The delegate of Mexico, Ambassador Castañeda, favoured majority voting — it would be impossible to require the express agreement of every State. Ambassador Beesley of Canada pointed out that though there were large majorities in favour of the general purport of the « common heritage » concept and the economic zone proposal, there were additional related issues to be resolved; confrontation and rapid recourse to voting were to be avoided on the one hand

may be added meetings of special groups (e.g. Arab States, Members of the E.E.C.) or of States with particular geographic interests (land-locked and shelf-locked countries, coastal States, archipelagic States, straits States). While not all of these layers (many of them overlapping) were in operation at the meeting in March 1971, that session brought out the importance of the regional groups and the need, especially amongst the Group of 77, to ensure — or reinsure — that all members were agreed. Since regional groups do not usually vote, at least on policy issues, the process of the Sea-Bed Committee itself reaching agreement was thus inevitably slow and laborious, and when it did so the result was the visual tip of the iceberg of submerged discussions and negotiations that had taken place.

[21] Virtually the only occasion when the taboo of voting was threatened was in 1972 when a group of States submitted a draft resolution condemning the hydrogen bomb tests held by France in the Pacific on grounds of the marine pollution caused. The Chairman of Sub-Committee III, Ambassador van der Essen (Belgium) declared that since decisions of the Sub-Committee were reached on a consensus basis, no vote would be taken; the matter would, however, be reflected in the report. The sponsors accepted this ruling. *A/AC.138/SC III/SR 26*, 3 August 1972.

[22] *A/AC.138/SR 96*, 6 April 1973.

[23] *A/AC.138/SR 103* and *104*, 24 August 1973.

and establishment of a veto system in the other. The need for a « representative majority » was invoked by Ambassador Tuncel of Turkey. The delegates of Bulgaria (Ambassador Yankov) and of the U.S.S.R. (Mr. Romanov) placed, for their part, the stress on the desirability of continuing the method of consensus. There the matter stood, until placed before the General Assembly in the autumn of 1973.

III. THE ADOPTION BY THE GENERAL ASSEMBLY OF RESOLUTION 3067 (XXVIII) AND OF THE GENTLEMAN'S AGREEMENT

At theTwenty eight session of the General Assembly, where the final determination had to be taken, there was a general agreement that the Conference should take place : the question to be determined was the conditions under which it would be held and, more specifically, how decisions were to be taken.

The Chairman of the Sea-Bed Committee, Ambassador Amerasinghe, gave it as his view that it was impossible to carry on in accordance with Sea-Bed Committee practice, solely by consensus; that way agreement would never be reached on a single text[24]. It would be necessary to rely, not only on the written rules of procedure — and he personally favoured the standard arrangement of a two-thirds majority in plenary and a simple majority at the committee stage — but on an accompanying understanding that resort would be had to voting only as a last resort. Formally, however, the rules of procedure and the understanding would be kept apart — the rules would stand as the official texts, black letter law, the understanding or gentleman's agreement would operate on a political level to provide the basis on which States would agree to negotiate with one another.

The essential part of this approach had wide support. The discussion concerned the modalities. The majority of developing countries sought to keep the distinction between the rules of procedure and the gentleman's agreement as clear as possible : the rules should follow the normal pattern and the political understanding should remain that and no more[25]. The developed countries, by contract, sought to tie the two together as closely as possible — to ensure that the rules of procedure (to be drafted initially by the Secretariat) reflected the understanding, and to make agreement on the rules dependent on acceptance of the understanding. The U.S.S.R., which went furthest in this regard,

[24] First Committee, 1924th mtg., 15 October 1973.

[25] See e.g. the statement made by the delegates of Kenya, 1929th mtg., 18 October 1973, and of India, 1930th mtg., 19 October 1973.

considered that the principle of the prior exhaustion of attempts to achieve consensus should be incorporated in the procedural rules themselves. In particular, the General Committee, as the overall steering committee, should be required to give its consent before the Conference moved from the « consensus stage » to the voting stage. The voting majority should moreover be considerably over the customary two-thirds; it should in fact be as close to consensus as possible[26]. The United States agreed on the need for a « mechanism » to determine the transition from the stage of consensus — which, it was emphasised, did not mean unanimity, — to actual voting[27]. The United Kingdom delegate pointed to the range of meanings inherent in the concept of « consensus »; if it did not mean total unanimity, it meant at least a majority such that, in actuality, no State could on its own stand against it or ignore it. To ensure that there was no precipitous move to voting a cautionary brake was required, an opportunity for delegations to consider their course of action and the consequences as regards the final outcome of the Conference. The General Committee, a relatively small but representative body with central responsibilities offered, in the British view, the most suitable means of providing such a safeguard[28].

The arguments advanced against the use of the General Committee as the « braking » (or, looked at the other way, the « unlocking ») mechanism, were basically twofold[29]. First, not all States would be members of the restricted body,but all would be affected — those uncertain of membership were on the whole not in favour therefore of allowing the General Committee, a body which would be weighted towards the major powers, to settle the question. Secondly, the range of matters which would need to be voted on — from details of wording to central issues of principle — would make the work of the Conference very laborious if the General Committee had to make a ruling each time; such rulings would in any case still be subject to approval by the Conference as a whole. The decision to set this machinery in motion would, however, be a difficult one for the State or States taking the initiative; a procedure so complex would tend in practice not to be used. It would therefore be preferable if the organ which made the determination that conciliation efforts had been exhausted was also the one where the question had originated — the Committee concerned or the plenary Conference itself — rather than putting the issue every time to the General Committee.

[26] 1928th mtg., 18 October 1973. Similar views were expressed by the representatives of Bulgaria, Czechoslovakia and the Ukrainian S.S.R., 1930th metg., 19 October 1973.

[27] 1928th mtg., 18 October 1973.

[28] 1933rd mtg., 22 October 1973.

[29] See generally the speech by Ambassador Castefiada (Mexico), 1933rd mtg., 22 October 1973.

After « strenuous negotiations », a revised text of the gentleman's agreement was presented by Ambassador Amerasinghe [30]. As he explained, there was almost universal feeling (a consensus ?) that efforts to reach a consensus shall be followed as far as possible, together with the opportunity of voting if those efforts proved unavailing. The negotiated text read :

> « The General Assembly,
>
> Recognizing that the Conference at its inaugural session will adopt its procedures, including rules regarding methods of voting and bearing in mind that the problems of the Law of the Sea 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,
>
> 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. »

On the grounds that mutual trust was required and that, in any case, the Assembly could not appear to be issuing directives to the Conference, it was stated the suggestions concerning the reference to the General Committee had not been retained.

Following a further turn in the story when the issue of invitations to the Conference became linked to acceptance of the arrangement that the draft resolution and the gentleman's agreement should be considered together [31], the First Committee finally adopted the draft resolution, on 25 October 1973, after the Chairman had stated his understanding « that it is on the basis of that gentleman's agreement that the Committee » would act on the proposed resolution. The vote was 106 in favour, none against, and nine abstentions, those in the last category being the U.S.S.R. and other members of the East European Group that considered that the obligation to incorporate the consensus principle in the rules of the procedure had not been sufficiently accepted. The General Assembly thereupon approved the proposal, as resolution 3067 (XXVIII) on 16 November 1973, a little over two weeks before the Conference was due to begin, the President of the Assembly repeating the understanding regarding the link with the gentleman's agreement [32].

[30] 1936th mtg., 25 October 1973.

[31] The African States made their acceptance of the gentleman's agreement conditional on Guinea-Bissau being included in the list of States to be invited. See the statement on behalf of the African Group by the representative of Uganda, 1937th mtg., 25 October 1973.

[32] 2169th mtg., General Assembly, 16 November 1973. The final vote on resolution 3067 (XXVIII) was 117 in favour, none against and ten abstentions.

IV. THE ADOPTION OF THE RULES OF PROCEDURE BY THE CONFERENCE

1. *The First Session (New York, 3-15 December 1973).*

The object of the short initial session was to dispose of organizational questions, including the choice of rules of procedure, so that the second session could be devoted solely to substantive discussions. Before considering the adoption of the rules of procedure, the structure of the Conference had to be decided on and the officers and members of the General and Drafting Committees elected. Although there were no problems over the basic arrangements — it was agreed that there should be three main Committees, thus following the pattern of the Sea-Bed Committee — various difficulties presented themselves as regards the selection of candidates for the posts allocated to the West European and Others (W.E.O.) Group. Seats were allocated to the W.E.O. Group on the understanding, on the part of the other groups, that the United States would be included amongst those proposed, although the United States was not a member of the Group. Secondly, France and United Kingdom, as permanent members of the Security Council and in accordance with previous practice, claimed (like the United States and the U.S.S.R.) membership of both the General and Drafting Committees. Lastly, the members of the W.E.O. Group were unable to reach agreement on the candidate they would put forward for the post of Chairman of the Drafting Committee (allocated to the W.E.O. Group) or on the candidates for the six Vice-Presidencies allocated to the Group (and which carried membership of the General Committee). Since it proved impossible, despite extensive informal consultations, to rearrange the allocation of posts or otherwise to find a solution which all could accept, the question arose of the means to be used to resolve the impasse. Was the Conference to proceed solely by consensus, in the absence of rules of procedure of its own, or were the General Assembly's rules of procedure to be applied in the interim ? A formal decision was finally taken, without objection, that the General Assembly rules should apply to the election of officers [33]. The States nominated by the various regional groups were elected by acclamation, with the exception of the W.E.O. candidates for the chairmanship of the Drafting Committee and for the Vice Presidential posts, the latter including France and the United Kingdom [34]. The W.E.O. Group accepted finally that the seats

[33] *A/CONF. 62/SR 5,* 11 December 1973. Seet the statement by the Legal Counsel, *ibid.*

[34] *A/CONF. 62/SR 7,* 12 December 1973. Ambassador Beesley (Canada) was elected Chairman of the Drafting Committee, by 81 votes to 54 votes for Ambassador Harry (Australia). The Chairman of the Drafting Committee may participate in the General Committee without the right to vote (rule 14 of the Rules of procedure *A/CONF. 62/30/ Rev. 1*). The officers also include a Rapporteur-General (Mr. K. Rattray [Jamaica]).

allocated to it included posts for the United States which, like the U.S.S.R., was elected to both the General and Drafting Committees [35].

Although the greater part of the first session was taken up with the issue of the distribution of posts and the election of officers, the Conference nevertheless began consideration of the adoption of its rules of procedure and devoted some half a dozen meetings to the topic. The delegates had before them the draft prepared, in accordance with paragraph 10 of resolution 3067 (XXVIII), by the Secretariat [36]. Given the complexity of the debate which ensued, both at the New York session and in Caracas, it is necessary first to set out the main features of the Secretariat's proposals, which formed the basic proposition.

As stated in the introductory note, the rules proposed were derived from those of the General Assembly and founded on those of previous conferences. While the usual voting rules were maintained (a two-thirds majority of those present and voting being required for substantive decisions in plenary sessions, a simple majority being sufficient in Committees; draft rules 39 and 54[e]), certain special procedures were included as a means of implementing the gentleman's agreement. The latter procedures (contained in draft rules 28, 36, 37, 54[d] and 55) were designed to facilitate the search for the broadest possible agreement on substantive matters before a formal vote was taken. Thus the President and the Chairman of the main Committees were empowered to ascertain the sense of the meeting on any matter at any time [37], the process of doing so not having the effect of a vote. As a similar exercise in prior clarification, the sponsors of conflicting proposals were to seek to reach agreement on a single proposal or on a restricted number of alternative texts, being assisted by the officers of the appropriate main Committee (draft rule 55). The Chairman involved was to report to the Committee on the progress achieved and, most important of all, when it was considered that further efforts to reconcile particular proposals were not likely to prove successful. If an objection was raised, no Committee might decide to close its debate on the topic under discussion however, or to proceed to a vote on a matter of substance, without the permission of the Conference itself (draft rule 54 [d]). As a counter-balance, a motion for the closure of the debate might be moved at any time in plenary session, a two-thirds majority being required for adoption (draft rule 28). This possibility in its turn

[35] A move to insist that a rule « One State, one seat » should apply in respect of participation in bodies of limited membership was unsuccessful. The President ruled that no State could, as of right, have more than one seat, but that regional groups were free to nominate their candidates, for whom member States were at liberty to vote as they saw fit.

France and the United Kingdom stated that they would not press for membership of both Committees and were amongst the States elected as Vice-Presidents, and as such *ex officio* members of the General Committee.

[36] *A/CONF. 62/2.*

[37] Draft rule 36. A similar rule applies in the case of committees of the International Monetary Fund. See GOLD, J., *op. cit.*, footnote 4.

was circumscribed by the power of the President to defer taking a vote on a motion for closure under draft rule 37. This provision, the source of much subsequent discussion, stated that the President might defer « the taking of any vote until a subsequent meeting », but that normally no vote might be deferred more than twice.

As a further innovation it was suggested that in order to cope with the large number of composite texts embodying optional or alternative proposals, passages within the innermost brackets (where brackets were used to indicate alternatives within a single text) should be voted on first, and, where a choice was required between alternative passages, amendments should be considered before the texts themselves; when the texts of alternative proposals had been established, representatives would be called upon to indicate the proposal on which they wished to vote first. The order of voting would then follow the preferences expressed (draft rule 45). The advantage which it was hoped to gain by this approach was two-fold : a vote, or series of votes, taken in accordance with this procedure would show which proposals enjoyed general, or only minority, support, without eliminating any text as a normal vote, operating on an « all or nothing » basis, would have done. Supporters of both « major » and « minor » proposals would accordingly be given an opportunity to notify their home authorities of the results achieved and to consider what changes in position were called for. Lastly, the Secretariat draft suggested that the rules of procedure themselves might be amended by a two-thirds majority, after the General Committee had reported on the proposed change (draft rule 64).

Although the Secretariat draft had been the subject of informal discussions, the Conference did not manage to reach agreement at its first session. The three or four days that remained after the election of officers were devoted to a discussion in which sharply divergent opinions were expressed and by the close of the December session a dozen amendments had been submitted.

As regards, first, the size of the voting majority required, the Secretariat proposal of a two-thirds majority for substantive decisions in plenary session and for other decisions to require a simple majority had the support of most delegates from third world countries. The U.S.S.R., however, sought to incorporate in the rules themselves the principle that substantive decisions should normally be taken by consensus; in the exceptional case that a vote was taken, a nine-tenths majority should be required [38]. Three land-locked countries, Afghanistan, Nepal and Zambia, also proposed that the rules should provide that decisions should be taken by consensus [39]. The United States was concerned with another aspect, namely the effect of abstentions which could result in decisions being taken by a small number out of the many States attending.

[38] *A/CONF. 62/6.*

[39] *A/CONF. 62/19.*

The usual phrase referring to a two-thirds majority of those « present and voting » should, it was suggested, be changed to « States participating in that session of the Conference »[40]. Australia offered a compromise by providing a double criterion : decisions on matters of substance should require a two-thirds majority of those present and voting, provided that this majority included at least a simple majority of the participants in the Conference[41].

A more complex issue was that of the choice of body entitled to determine that voting might take place. The U.S.S.R. considered that the Secretariat proposal, entrusting the responsibility to the plenary session, was inadequate — in its view the philosophy of the gentleman's agreement would more truly be reflected if it was the General Committee which was first required to give its consent, a consent which would be dependent, moreover, on the absence of objection on the part of the representatives of any geographical group which were members of the General Committee[42]. The delegates of developing countries were generally opposed to efforts to enhance the role of the General Committee; each main Committee and the plenary session should decide for itself, as cases arose, when efforts to pursue the search for a consensus were to be discontinued.

The discussion on this point became linked, however, to that over the arrangements for the deferment of voting, or the use of a « cooling-off period ». A group of African and Latin American countries proposed that a distinction should be drawn between the discretion given to the President in this regard, under rule 37 of the Secretariat draft, and a decision to defer taken by the Conference itself. The President's powers were limited to two deferments, and in no case might a deferment exceed 48 hours from the first postponement. The Conference, for its part, might decide to defer voting if a two-thirds majority so decided[43]. The U.S.S.R. wished to qualify — or extend — the President's authority in this regard by providing that no vote might be deferred more than twice if all efforts to reach an agreed decision had been undertaken, i.e. an unlimited number of deferments might be made up until that time, as determined, according to the U.S.S.R. proposal, by the General Committee. A third proposal, put forward by Australia, sought to provide a middle course between the Third World and U.S.S.R. propositions : if at least 15 representatives so requested, the President might defer the taking of a voting until a subsequent

[40] *A/CONF. 62/7/Rev. 1.* The representative of Kenya observed that the United States proposal meant that more than a two-thirds majority might be necessary in fact, because it could not be assumed that those not present and voting would not vote with the minority. *A/CONF. 62/SR 9,* 13 December 1973.

[41] *A/CONF. 62/9.* See also the Spanish proposal, *A/CONF. 62/10/Add. 1,* in which it was suggested that the definition of representatives present and voting should include those who abstained.

[42] *A/CONF. 62/6* and *A/CONF. 62/SR 6,* 12 December 1973.

[43] *A/CONF. 62/4,* submitted by Cameroon, Chile, Colombia, Kenya, Mexico and United Republic of Tanzania.

meeting « held not less than two days and not more than four days later » [44]. The question of whether all efforts to reach agreement by way of consensus had been exhausted would be the first item of business on the agenda of that meeting. If the Conference then decided, by a two-thirds majority, that such efforts had been exhausted, the vote on the substance would then be taken at a meeting held within two days. Lastly in this connexion, after the December session Japan put forward a suggestion that, in the case where the Conference was asked to give its permission to the closure of debate or for proceeding to a vote, the President, after consulting the other officers, should submit a report to the Conference on the desirability of giving such permission « in view of the overall progress made on all matters of substance regarding ocean spece which are closely related » [45]. The Conference, after receiving the President's report, would then take its decision by a two-thirds majority of the representatives participating in the Conference.

Amongst remaining issues, the proposal for a system of indicative voting did not find support, only the United States speaking in favour. The defect of the proposal was apparently its complexity — given the possibility of the deferment procedure, the operation in addition of the indicative voting mechanism seemed likely to produce an unduly elaborate system. It was therefore suggested that this procedure should be deleted [46]. The recommendation that the President be empowered to ascertain the sense of the meeting was likewise proposed for deletion. A President might always make such a ruling it was felt. The institution of efforts to reconcile proposals, envisaged in draft rule 55, was also received with a certain lack of enthusiasm by various developing countries, in particular as regards the role of Conference officers in determining that reconciliation efforts were not likely to be successful [47].

As regards the fate of the gentleman's agreement, which was annexed to the Secretariat draft, there was a tendancy on the part of the developing countries to consider that its function would have been fulfilled when the rules of procedure reflecting the agreement was been adopted. The gentleman's agreement would not therefore need to appear as an annex to the final rules [48]. The United States, however, considering that the agreement should continue to have an influence on the rules, proposed that the Conference should adopt a resolution containing the agreement, so as to make it an act of the Conference as well as of the General Assembly [49].

[44] *A/CONF. 62/9.*

[45] *A/CONF. 62/16.*

[46] *A/CONF. 62/4,* submitted by the States listed in footnote 43.

[47] *Ibid.*, and *A/CONF. 62/12,* submitted by Madagascar and United Republic of Tanzania.

[48] Representative of Tanzania, *A/CONF. 62/SR 9,* 13 December 1973.

[49] *Ibid.*

Since the December session did not succeed in adopting the rules of procedure, as required under the gentleman's agreement, it was agreed, on the proposal of the President, that informal consultations should be continued prior to the opening, on 20 June 1974, of the second session in Caracas, on the understanding that agreement would be reached by 27 June, i.e. within one week, at the latest. As regards the question of the means by which the rules would be adopted in the event that complete agreement had not been reached by that date, it was decided that the General Assembly rules should once more apply, namely adoption of the rules by simple majority, unless the Conference determined that an important question was involved, in which case a two-thirds majority would be required[50].

2. *The Second Session (Caracas, 20 June - 29 August 1974).*

The informal discussions held under the President's auspices between the two sessions did not result in a complete solution, although they produced some clarification as regards the central issues. Following further meetings, for the most part informal, at the opening of the Caracas session, it was the President who assumed responsibility for the presentation of a series of amendments to the draft rules of procedure, « on the understanding that the gentleman's agreement is to be formally endorsed by the Conference through a declaration of the President of the Conference incorporating the very terms of the gentleman's agreement »[51]. The amendments proposed themselves were « also to be regarded as forming a whole, every part of which constitutes an essential element ». The main elements of the solution proposed concerned : a) the gentleman's agreement and the question of how it was to be treated by the Conference; and b) the rules most directly reflecting the agreement, namely, the encouragement of negociations by the deferment of voting, the requirement that a determination be made that efforts to reach agreement had been exhausted before proceeding to a vote, and the size and nature of the majority required to take decisions, including a decision that efforts to achieve general agreement had been exhausted.

a) *The Gentleman's Agreement.* The gentleman's agreement had from the outset been intended as an injunction to the Conference in the choice of its working procedures. Insofar as these procedures were expressed in the rules of procedure and those rules reflected the agreement, why was there any need to

[50] *A/CONF. 62/SR 13,* 15 December 1973. See the statement by The Legal Counsel, footnote 33. The representatives of France, the U.S.S.R., the United Kingdom and the United States had earlier expressed serious concern at the possibility that the rules might be adopted by majority vote after the expiry of a deadline set for 14 December. *A/CONF. 62/SR 9,* 13 December 1973.

[51] *A/CONF. 62/WP 1.* The informal consultations took place between 25 February and 1 March and 10 to 12 June 1974. WP 1 was proceeded by a number of Conference Room papers.

take further action ? Although there were some amongst the developing coastal States who were prepared to take this position, the majority were of the view that they could accept, if need be, that the Conference should take some step of endorsement which would denote that the Conference for its part had accepted the agreement. The informal consultations prior to the Caracas session had produced two suggestions in this regard : (i) that the gentleman's agreement should be incorporated in a decision which the Conference would approve by acclamation, it being understood that any opposing delegations could enter their reservations on the record; and (ii), that the President should read out the text, which would thereupon be approved by consensus. The President gave it as his opinion that the best course be for him to read out the agreement, for approval by acclamation[52]. It was essentially this latter suggestion which, following further consultations, was contained in a further proposal by the President[53]. The President was at pains to emphazise that what was involved was a declaration, essentially hortatory, of the intentions and good faith of the States participating in the Conference to seek agreement; it was not itself a rule of procedure. The representative of Tanzania objected to the proposal that the declaration be endorsed « by acclamation »; his delegation dissented from draft rule 37 (relating to deferment), as regards both its terms and the link between the rule and the gentleman's agreement. The accent should be on negotiations : the adoption of both rule 37 and the gentleman's agreement would, in his view, not represent a compromise but an undue weighting of procedures in favour of those reluctant to negotiate[54]. It was agreed therefore that the declaration should be adopted by consensus, so as to enable Tanzania to indicate its reservations. The inclusion of the declaration in an appendix to the rules was also accepted, so as to provide, in the words of the United Kingdom delegation, guidance for the Conference and in negotiations when the question of voting arose[55]. On these assumptions the gentleman's agreement was approved, by consensus, by the Conference at its 19th meeting on 27 June, immediately prior to the adoption of the rules of procedure themselves. The appendix to the rules of procedure[56] reads as follows :

> « *Declaration incorporating the " Gentleman's' Agreement " made by the President and endorsed by the Conference at its 19th meeting on 27 June 1974.*
>
> 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 Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.
>
> Approved by the United Nations General Assembly at its 2169th meeting on 16 November 1973. »

[52] *A/CONF. 62/SR 15,* 21 June 1974.
[53] *A/CONF. 62/WP 2.*
[54] *A/CONF. 62/SR 16,* 25 June 1974.
[55] *Ibid.*
[56] *A/CONF. 62/30/Rev. 1.*

b) *The Rules of Procedure.* The earlier discussions had led to general agreement that there should be a « cooling-off period » — translated as a deferment of the decision to vote during which informal negotiations would be pursued. What remained to be settled were the conditions for setting this procedure in motion and the circumstances in which a determination might be made that efforts to reach common agreement had been exhausted. The latter issue involved that of the nature of the majority required for such a determination, and overlapped with the general problem of the definition of the voting majority.

The answers which were finally given to these questions are to be found mainly in Rule 37[57] which contains in paragraph 1 what the President termed the « essence » of the gentleman's agreement. Before a matter of substance is put to the vote[58] a determination must be made in accordance with this paragraph that all efforts at reaching « general agreement » have been exhausted — a determination being required in all instances without distinction, thus avoiding the need to introduce other complexities[59]. As regards the choice of the expression « general agreement » at the centre of rule 37, the question was raised why this term was used instead of the more familiar « consensus ». In his reply the President made it clear that the two expressions were indeed synonymous, citing the adoption by the Economic and Social Council of a recommendation to the World Population Conference, defining consensus as a general agreement obtained without a vote but without there necessarily being unanimity[60].

The majority required for the determination is the same as for decisions on matters of substance, namely a two-thirds majority of the representatives present and voting, providing that this includes a majority of the States participating

[57] The proposal made by the Secretariat and the amendments proposed by various Member States prior to the Caracas session are set out in *A/CONF. 62/L.1.* Phe President's proposals at Caracas (other than those in Conference Room papers) are contained in *A/CONF. 62/WP 1* to *WP 6* (other than *WP 5*), issued between 25 and 27 June 1974. The proposals relating to Rule 37 are in *WP1 and WP3.*

[58] If there is a dispute as to whether the matter is one of substance or procedure, the President is to rule. An appeal against his ruling requires a simple majority for adoption, rule 39, § 4. This reflects the standard United Nations practice.

[59] E.g. a suggestion by Peru providing for joint voting on related proposals, *A/CONF. 62/13.*

[60] The matter was brought up by Ambassador Galindo Pohl (El Salvador), *A/CONF. 62/SR 17,* 26 June 1974. For the recommendation of the Population Commission to the Economic and Social Council, which the latter accepted, see *E/CONF. 60/2,* Annex. The World Population Conference was held in Bucharest, 19-30 August 1974.

In support of the response given it may be noted that the Oxford Dictonary of Etymology (1966) defines « consensus » as « general agreement» and traces the origins to physiology as follows « (of parts of the body), after Bausner, *De consensu partium humani corporis,* 1556, XIX », — a suitable history for a term applied to the body politic.

in that session[61] — thus the principle of the double criterion as set out in Australian proposal was accepted. Before the determination referred to in paragraph 1 is made however, a series of procedures may be invoked, as set out in paragraph 2. The first time a matter comes up for voting the President may — and, if requested by at least fifteen representatives[62], shall — defer the taking of the vote for a period of up to ten calendar days. In the case of the main Committees a parallel possibility exists[63]. This « automatic deferment », which may applied only once as regards a particular issue, is designed to give the President, if not a prerogative, at least a preeminent position, during a period in which he is to seek to bring about a reconciliation of divergent attitudes; as the President made clear, the use to be made of the discretion would be decided on a case by case basis. The period of ten days, though critised as too long, is the maximum available; there is no obligation on the President to give a deferment for the full length. In any event however, even if the automatic deferment under paragraph 2 a) is not used, the Conference itself may decide, under paragraph 2 b), to defer the taking of a vote on a given matter. Such a decision may be taken upon a proposal put forward by the President or by a representative, by a simple majority of those present and voting. The « discretionary deferment », which also exists for Committees, may be taken any number of times; the duration of the deferment is to be for a specified period of time.

Whether the decision for deferment is arrived at under the « automatic » or « discretionary » procedure, the result is the same : during the period of deferment the President is required to make every effort « with the assistance

[61] Rule 39, § 1. (See also rule 22 on the requirements for a quorum.) Thus assuming 140 states to participate in a session, at least 70 positive votes would be required before a proposal was adopted. If 105 States took part in the vote, the two-thirds requirement would come to the same figure, 70. The « safety clause » of a majority of participating states would accordingly come into play if less than 105 states engaged in the vote. (These figures are hypothetical, and intended to show the scale of the problem and, within rough limits, the point at which requirement of a majority of participating States would become of interest.) The Secretariat is to maintain a Register indicating the States whose representatives have registered with the Secretariat as participating in the session, Rule 40, § 2.

[62] It was not said how the number of fifteen was chosen. It is however larger than the smallest regional group. May the representatives concerned suggest the length of the deferment ? Such a possibility is not excluded, and would accord with paragraph 2 (b) which permits any representative to make a motion for deferment for a specified period of time.

[63] Rule 55. The points of differentiation are : (i) the length of the « automatic deferment » is reduced to five days; (ii) in the case of the main Committees a determination pursuant to Rule 37, § 1, requires a simple majority of the representatives of the States participating in the session — a considerable stiffening of the normal rule in non-plenary organs of a simple majority of those present and voting; and (iii), the possibility of the provision of assistance to the Chairman by the officers of the Committee (as opposed to the General Committee in the case of the President).

of the General Committee as appropriate », to facilitate « the achievement of general agreement having regard to the over-all progress made on all matters of substance which are closely related ». The extent to which the President will seek the help of the General Committee is a matter for him to determine[64]. The crucial object of the rules — how are the negotiations envisaged to be brought to a successful conclusion — is not specified : as the President said, the conditions for reaching agreement cannot be spelt out in explicit fashion. At most facilities — and pressures — can be delicately orchestrated through the rules of procedure — the rest must depend on the efforts of the individual representatives involved and the content of the instructions received from their governments. The President is required to report to the Conference on the results of his endeavours prior to the end of the period of deferment. If he considers that a further period of consultations would be desirable, he may request the Conference to agree to such an extension under paragraph 2 b) (the « discretionary deferment ») — here both his discretion *not* to request such a further deferral and, if he should ask for a further period, to suggest how long it should be, provide him with diplomatic weapons of considerable potential weight. It is thus the President, and not an individual member State, who bears the central responsibility for the operation of the deferment machinery. This result was in no small part a tribute to the President of the Conference, Ambassador Amerasinghe, who had presided over the Sea-Bed Committee as well as over the gestation of the rules of procedure — his qualities were thus both known and widely respected, and the more the problem was studied, the more it seemed that reliance on his skills offered the Conference its best chance of success.

If, nevertheless, by the end of a period of deferment, the Conference has not reached agreement, and if there is no further deferral under subparagraph (b), a determination that all efforts to reach general agreement have been exhausted has to be made : this requirement is contained in paragraph 1 of Rule 37 and restated in subparagraph (d) of paragraph 2, so as to avoid any possible uncertainty on the point. In the event that the Conference does not make the determination, the President may propose, or any representative may move, after five calendar days (less during the last two weeks of a session) that the determination should be made — the object of this particular clause being to prevent repeated calls being made in the interim for a determination, a nerve-wrecking prospect for delegates and bureau alike.

Lastly, when the determination has been made, the Conference will nevertheless not proceed to the actual vote on the substance less than two days after an announcement has been made that the Conference is to do so, the announcement being published in the Conference *Journal* at the first opportunity.

[64] See the exchange of views on this aspect between the President and the representative of Tanzania, *A/CONF. 62/SR 17*, 26 June 1974.

This further delay will mean that delegates will not be called upon to vote immediately after a request for a further extension has failed of adoption and a determination made; instead they will have an opportunity to get new instructions from their governments as to how, in the light of what has taken place, they should act. It may be envisaged furthermore, in keeping with the spirit of the gentleman's agreement, that it is in this last quarter of an hour that informal negociations will be at their most intense — with fearful complexities between one item and another — in an effort to achieve a final, general agreement.

Closely connected with Rule 37 on « Requirements for voting », was the issue of the definition of the majority required to take substantive decisions, including determination of the exhaustion of « reconciliation » efforts. The poles of approach were represented, on the hand, by those, chiefly developing coastal States, who while accepting the desirability — indeed the necessity — of negotiations, wanted decisions to follow the standard practice of a two-thirds majority of those present and voting as regards substantive decisions taken in plenary session and a simple majority in Committees. At the other extreme, advocated above all by the U.S.S.R. and the members of the East European Group, but also supported by a number of land-locked and shelf-locked developing States, it was contended that all decisions should be taken normally by consensus but that voting, if and when it did take place, should require a two-thirds majority of States participating (a reduction from the original proposal by the U.S.S.R. of at least for a nine-tenths majority). The final result, as contained in Rule 39, paragraph 1, was that substantive decisions of the Conference (i.e. those taken in plenary session) require a two-thirds majority of representatives present and voting, provided that this includes a majority of States participating in that session.

A further aspect of the voting rule which was the subject of particular discussion was whether a majority of the standard kind or a specially reinforced majority would be required for the adoption of the text of the Convention as a whole. The discussion on this issue ebbed to and fro, the eventual result giving some satisfaction to both sides. The adoption of the text of the Convention as a whole is subject to the normal rule for substantive decisions, as set out in Rule 39, paragraph 1, and Rule 37 is not to apply; the Convention is nevertheless not to be put to the vote less than four working days after the adoption of its last article[65].

[65] Rule 39, § 1 and 2. Article 9, § 2, of the Vienna Convention on the Law of Treaties provides that the adoption of the text of a treaty at an international conference requires a two-thirds vote of the States present and voting unless by the same majority they decide to apply a different rule. Since the rules of procedure were adopted by consensus the latter requirement was satisfied.

A problem may arise in connexion with Rule 39, § 2, so as to place a query against the way the provision may operate, other than as a means of ensuring that translation

The U.S.S.R. and East European Group members were not entirely satisfied with the voting requirements however, as finally drawn up. Following the adoption of the rules the U.S.S.R. delegate stated that a requirement of two-thirds of the participating States would have been preferable; if decisions were taken by simple majority (namely, in Committee), his delegation would abstain. He also stated that his delegation would have abstained if the « package deal » as a whole had been submitted to a vote[66] — a reference to the fact that, if consensus had not been reached, the rules of procedure would have been adopted under the General Assembly rules.

As indicated, the rules were adopted on 27 June, the final date set by the Conference at its December session, by consensus. There was a general feeling of relief and gratification that the Conference had managed to reach agreement as regards the procedural structure of its work without recourse to voting. Other changes, mostly consequential, were also made in the draft rules. Chapter VI, originally entitled « Voting », was put under the heading « Decision-Making » and Rule 37 (originally in Chapter V on the « Conduct of Business ») included in it[67].

difficulties, textual details etc., have been taken care of. If it is intended to give the supporters a chance to think again, in the light of the stated refusal of a minority to accept the final text, then a motion would still have to be made for an amendment (assuming a move towards a compromise). If such a motion were accepted, a further four days would then have to elapse.

The rules of procedure may themselves be amended by a decision of the Conference provided the « double majority » requirement is met, after the General Committee has made a report, Rule 66.

[66] *A/CONF. 62/SR 20*, 27 June 1974.

[67] The maln other changes were the following :

— Draft rule 29 on the closure of debate : this possibility was separated from that of deferment of voting.

— Draft rule 36 on the sense of the meeting : not retained.

— Draft rule 45 on the order of voting on proposals (« indicative voting » proposal) : not retained. The result is still somewhat complex (see Rules 43, 44 and 45), but follows generally the system found in the General Assembly rules. At the 20th meeting the Peruvian delegate withdrew his country's amendment for joint voting on related proposals, *A/CONF. 62/13*, on the condition that the records reflected « that there was a political understanding to take joint vote on retard proposals so as to ensure equal treatment of items which would require simultaneous discussion ».

— Draft rule 55 on efforts by sponsors to reconcile proposals : not retained.

A separate issue concerned credentials. China proposed that credentials should be re-examined at each session. This was opposed by others, in particular by the United States, who considered that credentials once accepted should remain valid throughout the duration of the Conference. A final compromise was reached whereby only the credentials of newly accredited representatives are to be examined after the first session, unless the Conference decides otherwise by a majority of the representative present and voting. Rule 4 and Rule 40, § 2.

Lastly, besides representatives of the United Nations Council for Namibia, already invited under the terms of resolution 3067 (XXVIII), the Conference determined that national

V. CONCLUSIONS

The adoption of texts so complex and so laboriously negotiated as the rules of procedure of the Law of the Sea Conference gives ample ground for speculation concerning the present state of international organisations and of international politics more generally. While there is an element of paradox in considering the decision-making process of a Conference which, like the preparatory Committee before it, has not so far taken any substantive decisions, this fact only serves to underline the difficulty and the seriousness of what is involved. The Law of the Sea occupies a central place amongst items on the United Nations agenda. On thl one hand are items of less importance, not because of their intrinsic value, but because of their lesser immediate political impact — the field of human rights for example, or of social welfare, or more technical matters, such as those dealt with by the specialized agencies. If the means available to international organizations, and to the bulk of their members, for dealing with such topics are limited, they are even more so as regards the great issues of the day — economic development, overpopulation, the threat of war. The problems presented under the heading of the Law of the Sea, which, it may be noted, are largely the result of impersonal forces of scientific and material advance rather than of deliberate design, thus stand as the most important single question or series of questions of which the organized international community is seized — and for which a widely accepted long term solution cannot be found except within an international framework. If, therefore, despite the difficulties engendered by differences of interest, agreement can be reached in this sphere, it will be feasible to go on to consider what can be done to deal with the wider, more all-encompassing problems. If, correspondingly, efforts do not succeed, then the chances of coping effectively with the larger questions will be accordingly reduced. Thus much importance attaches to the decision-making process evolved by the Law of the Sea Conference and to the results it produces.

The question remains as to how the system will work, and to assess its potential significance as a step in the evolution of international organizations. Although it is of course possible that the machinery of Rule 37 will not be regularly applied with full weight and vigour — complex procedures have a way of being bypassed — the rule now stands and will have to be observed if the Conference is ever to proceed to voting on matters of substance. In cases where paragraph 2(a) has been used, paragraph 2(b) will probably not be consistently invoked; if it were the Conference might be prolonged to such a

liberation movements recognized by the Organization of African Unity or by the League of Arab States should be entitled to designate representatives to participate as observers. The Conference decided, by 88 votes to 2, with 35 abstentions, that it was competent to consider the proposal, which itself, following a report by the General Committee, was adopted by consensus as an addition to the rules of procedure (Rule 63). *A/CONF. 62/SR 38* and *SR 40*, 11 and 12 July 1974.

degree that States would lose interest and confidence in its ability to produce results. So far as the major proposal itself is concerned, one of the main shifts in emphasis which occurred as the negotiations continued was to make the decision that efforts to reach general agreement had been exhausted one in which all States should participate, but to place the initiative and responsibility for efforts to facilitate that agreement — other than as they derive from the gentleman's agreement — on the bureau. Since the President or Chairmen, in the case of Committees, have a discretion over the according of deferment periods and over what occurs during them, their role is strengthened — or, to put the matter another way, the opportunity for an individual State, or group of States, that wishes to bring the discussions (informal or otherwise) to an end and to proceed to a vote, is reduced. From this it can be argued that the elaborate nature of the safeguards is such that the results may indeed eventually be counter-productive, that States, considering that the procedures are too difficult to surmount, may opt for simpler solutions outside the Conference framework. Balancing this, however, is the fact that under the rules States are oriented towards presentation of their substantive positions, rather than towards procedural moves — the respectives sides will state their case and it will be the President and Chairman who, in the major instances, will have to seek to reconcile them and to act as go-betweens, having at their disposal a considerable influence over the available procedural measures. Nevertheless, when all this is said, in a decentralised world and as regards an issue for which force as such cannot provide an effective solution, States will still have to find ways of agreeing with one another — movements of conciliation and compromise from the different parties, or one side yielding to the other, will still be involved : no rules of procedure can do away with the central nub of the problem of actually reaching agreement.

The machinery remains however, as everyone has said, very elaborate. In the event that a given State or group sought to press for a vote, the operation would certainly take an appreciable time, assuming any sort of firm opposition, to be measured in weeks rather than days. All this leads to the reflection that, although there may be a few trial runs, the most likely course is that voting on substantive matters, or those at least of main significance, will eventually take place in a consolidated rush in the plenary session; the items of major importance — beginning with those before the Second Committee — will be drawn together, the exact lines of demarcation established, consultations and informal meetings held, with possible threats of voting and counter-threats of deferment, until there is a move to have recourse to plenary meetings in order to grapple in earnest during a determent period with a principal issue or group of issues. If no agreement is reached at the end of such a period, the moment would come whether to rule that efforts at reaching general agreement had been exhausted so that the Conference could proceed to voting. The procedure of Rule 37 stands therefore as a cautionary, and indeed possibly prohibitive,

device, awesome to all — the more reason therefore, together with the complexity of the issues, why the temptation may be to use it in a conscious, political sense, as part of a major exercise which, once passed, will be followed by a bout of voting. That experience undergone, items of lesser importance may follow a less arduous course — or one which, even if the apparatus of Rule 37 is followed, will not be so heavily significant for the fate of the Conference as a whole. But all of this is of course speculation, an attempt to look ahead and to gauge the more likely, as opposed to least probable, outcome; the number of factors to be weighed and the scale of the Conference makes prophecy more than usually hazardous.

The other main question is that of the consequences of the rules now adopted as regards international organizations more generally. Will the rules be followed in other contexts ? Some parts of the rules — concerning the participation of liberation movements — seem fairly certain of more widespread adoption[68]. The dual criterion for majorities — the requirement that the two-thirds majority of representatives voting includes a majority of the participating States — is also likely to appear at other conferences. The principle of deferment, as opposed to the particular mechanism, may also be proposed in other contexts. The procedure is unsuitable, however, for organizations, such as most universal bodies, which adopt resolutions, as opposed to potential treaty texts, and which hold relatively short sessions[69]. The most obvious candidate is a future law-making conference, but these, of a nature similar to the Law of the Sea Conference, are rare. The most significant feature of the procedure it is suggested — and here, with whatever changes of detail may be required to fit particular circumstances, may be the essential seed of the procedure — is that it provides the possibility of giving a specific answer to the question « What is a consensus ? » within an international body. Previously the answer has been a political one — an evaluation of the extent to which the major political groups had accepted a given proposal, whether by encouragement (the others being agreed, forcing the remaining group to accept, to avoid isolation) or by counter-pressure (a group so strongly opposed that it is the others that have to make concessions). A consensus so defined is one of shifting content, requiring reassessment in terms of each particular context; not only that, it assumes that negociations may be continued until such a general result is achieved. The machinery of Rule 37 — and, as noted, we do not know as yet how widely it will be followed — enables another answer to be given : consensus means that a procedure of deferment has been followed until a determination has been made that efforts to reach mutual agreement have been exhausted —

[68] And indeed has already occurred e.g. the action taken by the General Assembly at its Twenty-ninth session concerning the Palestine Liberation Organization.

[69] Might it be used as regards some of the provisions of the Law of the Sea Convention relating to the International Sea-Bed Authority ? Or for proposals for amendment of the Convention ?

a vote taken on the matter of substance after those prior steps may be presented either as the results of the search for a general agreement or the nearest result to such agreement — and, as such, having a value greater than would otherwise be the case. If that should be so, even greater importance will be given to regional and political groupings. Only perhaps the United States and the U.S.S.R. can have serious pretentions to stand against a majority vote taken in such circumstances. For States other than these, even medium powers, this will not be the case unless they act together. Thus here as elsewhere the history of international organizations reflects the world in which these organizations find themselves, and the evolution of their decision-making procedures the current state of their adaptation to it.

ANNEX

Rules 37 to 40 and Rule 55 the Rules of Procedure are reproduced below. Rules 37 to 40 come from Chapter VI « Decision Making » and Rule 55 from Chapter VII « Committees and Subsidiary Organs ».

« *Requirements for voting*

RULE 37

1. Before a matter of substance is put to the vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified in paragraph 1 of rule 39.

2. Prior to making such a determination the following procedures may be invoked :

(a) When a matter of substance comes up for voting for the first time, the President may, and shall if requested by at least 15 representatives, defer the question of taking a vote on such matter for a period not exceeding 10 calendar days. The provisions of this subparagraph may be applied only once on the matter.

(b) At any time the Conference, upon a proposal by the President or upon motion by any representative, may decide, by a majority of the representatives present and voting, to defer the question of taking a vote on any matter of substance for a specified period of time.

(c) During any period of deferment, the President shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement, having regard to the over-all progress made on all matters of substance which are closely related, and a report shall be made to the Conference by the President prior to the end of the period.

(d) If by the end of a specified period of deferment the Conference has not reached agreement and if the question of taking a vote is not further deferred in accordance with subparagraph *(b)* of this paragraph, the determination that all efforts at reaching general agreement have been exhausted shall be made in accordance with paragraph 1 of this rule.

(e) If the Conference has not determined that all efforts at reaching agreement had been

exhausted, the President may propose or any representative may move, notwithstanding rule 36, after the end of a period of no less than five calendar days from the last prior vote on such a determination, that such a determination be made in accordance with paragraph 1 of this rule; the requirement of five days' delay shall not apply during the last two weeks of a session.

3. No vote shall be taken on any matter of substance less than two working days after an announcement that the Conference is to proceed to vote on the matter has been made, during which period the announcement shall be published in the Journal at the first opportunity.

Voting rights

RULE 38

Each State represented at the Conference shall have one vote.

Required majority

RULE 39

1. Decisions of the Conference on all matters of substance, including the adoption of the text of the Convention on the Law of the Sea as a whole, shall be taken by a two-thirds majority of the representatives present and voting, provided that such majority shall include at least a majority of the States participating in that session of the Conference.

2. Rule 37 shall not apply to the adoption of the text of the Convention as a whole. However, the Convention shall not be put to the vote less than four working days after the adoption of its last article.

3. Except as otherwise specified in these rules, decisions of the Conference on all matters of procedure shall be taken by a majority of the representatives present and voting.

4. If the question arises whether a matter is one of procedure or of substance, the President shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.

Meaning of the phrase « representatives present and voting » and of the term « States participating »

RULE 40

1. For the purpose of these rules, the phrase « representatives present and voting » means representatives present and casting an affirmative or negative vote; representatives who abstain from voting shall be considered as not voting.

2. Subjct to the provisions of rules 1 to 5 and without prejudice to the powers and functions of the Credentials Committee, the term « States participating » in relation to any particular session of the Conference means any State whose representatives have registered with the Secretariat of the Conference as participating in that session and which has not subsequently notified the Secretariat of its withdrawal from that session or a part of it. The Secretariat shall keep a Register for this purpose.

Officers, conduct of business and voting

RULE 55

The rules relating to officers, conduct of business and voting of the Conference (contained in chapters II (rules 6-13), V (rules 22-36) and VI (rules 37-49) above) shall be applicable, *mutatis mutandis,* to the proceedings of committees and subsidiary bodies, except that :

(a) The Chairmen of the General, Drafting and Credentials Committees and the chairmen of subsidiary organs may exercice the right to vote;

(b) The presence of representatives of a majority of the States participating in that session of the Conference shall be required for any decision to be taken on any matter in a Main Committee; a majority of the representatives on the General, Drafting or Credentials Committee or any subsidiary organ shall constitue a quorum;

(c) Decisions of committees and subsidiary organs shall be taken by a majority of the representatives present and voting, except in the case of a reconsideration of a proposal for which the majority required shall be that established by rule 36;

(d) Rule 37 shall be applied to the Main Committees, provided that a determination pursuant to paragraph 1 shall require a majority of the representatives present and voting, the deferment of the question of taking a vote by the Chairman of the Committee in conformity with subparagraph 2 *(a)* shall not exceed five calendar days and the assistance specified in subparagraph 2 *(c)* shall be rendered the Chairman by the officers of the Committee. »