

Third United Nations Conference on the Law of the Sea

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126th Plenary meeting

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countries regarding the common heritage of mankind might not always be represented by the major industrialized countries.

55. As far as the matters discussed in the Second Committee were concerned, his delegation felt that questions forming part of the over-all package deal which had already been formally agreed upon should not be taken up again. The chairman of negotiating group 6 had proposed a compromise formula for article 76 on the definition of the outer limits of the continental shelf, which appeared to offer improved prospects of a consensus, but the Arab States had not been able to support that formula. Efforts to reach a solution acceptable to all delegations must continue at Geneva. That was equally true of the

question of revenue-sharing, which had not received sufficient consideration.

56. Although the new proposals arising out of the work of the Third Committee did not meet its preferences in every detail, Finland was prepared to support their incorporation into the second revision of the negotiating text.

57. His delegation was pleased at the progress achieved at the current session, including the work on the final clauses, the preamble and the establishment of a preparatory commission, and it looked forward with confidence to the continuation of the session at Geneva.

The meeting rose at 1.10 p.m.

126th meeting

Wednesday, 2 April 1980, at 3.25 p.m.

President: Mr. H. S. AMERASINGHE

Statements on the second revision of the informal composite negotiating text (*continued*)

1. Mr. CHAO (Singapore) said that, with respect to the reports touching on matters raised in the First Committee, his delegation was in favour of incorporating the amendments proposed by the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.27 and Add.1) in their entirety in a second revision of the informal composite negotiating text, on the understanding that further negotiations would be held in Geneva if there were still difficulties. In his delegation's view, the texts proposed by the five Chairmen, as compared with those in the negotiating text, did offer a substantially improved basis for negotiations towards a consensus.

2. With regard to the report of the Chairman of the Second Committee on the question of the continental shelf (See A/CONF.62/L.51), his delegation had certain difficulties which were both procedural and substantive. In particular, the procedure adopted for consultation and negotiation left much to be desired. Consultations had taken place primarily among the margineers (broad-margin States) and between the margineers and the two super-Powers, and had in any case been insufficient to gauge the reactions of other delegations to the addition of a new paragraph 6 to article 76 and to the amendment to paragraph 3 of the same article. Delegations had had only a matter of hours to examine and comment on provisions of a highly technical nature, and questions had been asked to which no satisfactory answers had been forthcoming. Article 76 of the revised negotiating text (A/CONF.62/WP.10/Rev.1) was itself already complex, and, unless the sponsors of the amendments could provide clear answers to the questions raised, greater confusion would be added to the text of the article.

3. The proposed text for annex II setting out the composition of the commission on the limits of the continental shelf was also unsatisfactory in that it based election to the commission entirely on the principle of equitable geographical distribution. That would not preclude the possibility that the commission might be dominated by nationals of the broad-margin States and those sympathetic to their views. It was essential that nationals of the relevant interest groups should be fairly represented in the commission in order to ensure that its integrity was not open to question.

4. Finally, no real efforts had been made to bring the two opposing sides to negotiate on the revenue-sharing formula in article 82. That was still an outstanding issue, and the rate of contribution specified in the article was decidedly low.

5. For all the foregoing reasons, his delegation opposed any piecemeal attempt to resolve the issues concerning the continental shelf question. It must be emphasized that a satisfactory compromise could only be worked out by a group in which opposing or different views were adequately represented.

6. His delegation believed that it was of the utmost importance that the Conference should decide on a definition of the continental shelf which was clear and simple to apply. The exploitability criterion in the 1958 Convention on the Continental Shelf¹ had led to creeping jurisdiction over the last 20 years, and had posed immense problems for the current Conference. With that experience in mind, the Conference should refrain from adopting a new formula which would be infected by the same disease of uncertainty. Unfortunately, however, the definition contained in the revised negotiating text gave his delegation serious cause for concern.

7. In view of the vast expanse of resources which the revised negotiating text accorded to coastal States and the broad-margin States, it seemed to his delegation that the Conference was spending an inordinate amount of time elaborating a régime and institutions to exploit the wealth of the deep sea-bed. That wealth paled in comparison with the resources of the continental shelf, which would be given to the coastal States and the broad-margin States. His delegation therefore welcomed and supported the proposal, first made by Nepal in 1978, for a common heritage fund.² Such a proposal would benefit all countries, particularly the developing countries and he hoped that the Conference would have the vision to rectify the inequity inherent in the revised negotiating text by adopting it.

8. It was to be noted from the report of the Third Committee (A/CONF.62/L.50) that the Committee had adopted compromise proposals on all the outstanding points concerning marine scientific research, and his delegation recommended their incorporation in the second revision. It was also prepared to accept the compromise solution for article 254 on the understanding that, in accordance with the principle of good faith, the power given to the coastal State in the new paragraph 3 to object to the appointment by a land-locked or geographically disadvantaged State of experts to participate in marine scientific research should only be exercised on good and sufficient grounds and that the coastal State was not entitled to exercise that power capriciously.

¹United Nations, *Treaty Series*, vol. 499, No. 7302, p. 311.

²*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IX (United Nations publication, Sales No. E.79.V.3) document A/CONF.62/65.

mandatory nature, his delegation preferred to retain article 76, paragraph 7, as it now stood.

98. As a sponsor of document NG7/2/Rev.2, his delegation endorsed the comments made by the representative of Spain with regard to the work of negotiating group 7 on delimitation problems. The report showed how difficulties in negotiating group 7 had made it impossible to reach agreement. The report did, however, contain a number of useful elements for future work and emphasized that paragraph 1 of articles 74 and 883 could not be regarded as a basis for consensus. Although the reference to international law contained in the formula suggested was very helpful, it must be understood to be a reference to existing international law. Further discussions on the subject would have to take place, although the formula suggested offered a better basis for consensus than the existing negotiating text.

99. His delegation supported the proposal to amend article 65 on marine mammals (see A/CONF.62/L.51). It understood the second sentence of the proposed amendment to mean that the assistance of an international organization in the conservation, management and study of any particular stock of cetaceans would be required when considered desirable and necessary in respect of those individual stocks.

100. As a member country of the European Economic Community, his delegation endorsed the comments made by the representative of Italy, particularly with regard to the inclusion in the final clauses of the provision enabling the Community to become a contracting party to the future law of the sea convention.

101. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the progress made during the ninth session had created favourable conditions for the achievement of consensus at the resumed session at Geneva. The adoption of a mutually acceptable convention would promote the strengthening of peace and security and friendly relations among States.

102. While discussions in the First Committee had been constructive, no acceptable solution had yet been found for the important political question of the decision-making machinery in the Council. The best compromise was reflected in the existing requirement, in article 161, paragraph 7 of the revised informal composite negotiating text, that decisions be taken by a three-fourths majority. A number of developing and Western countries were unwilling to accept that formula. For its part, the Soviet Union, and probably other countries as well, could not accept any procedure which would discriminate in favour of certain socio-economic systems or geographical groups of States. If a majority of participants in the Conference still favoured an amendment to article 161, paragraph 7, it should be one which would preserve the balance in the Council between all socio-economic systems and geographical groups of States. One possible formula might be that a decision would be taken unless there was unanimous opposition by the members of any geographical group. That principle would protect the interests of States in the special categories referred to in article 161. Any other approach would destroy the basis for establishing an international sea-bed Authority, and make it impossible for a number of States, including the Soviet Union, to participate in it.

103. The new text on exploration and exploitation of the resources of the area and the transfer of technology (see A/CONF.62/C.1/L.27 and Add.1) posed certain difficulties for the Soviet Union. However, his delegation was prepared to accept it as a compromise, provided an acceptable solution could be found to other unresolved issues in the First Committee.

104. The anti-monopoly clause should also apply to the reserved zones, whereas the provision concerning the priority of the *Enterprise* should not extend to joint ventures with private companies. The new wording of article 151 was a basis for a compromise reflecting the interests of exporter countries and

node-processing countries; but concrete figures should be examined in the interest of an acceptable solution. The principle of limiting the mining of metals under each contract was important in preserving opportunities for development of the area's resources.

105. His delegation would be prepared to support the formula for the financing of the *Enterprise* in the event of an acceptable solution to all outstanding issues. However, there should be a closer definition of the obligations of States with regard to the financing of the first stage of the *Enterprise*. The compromise wordings drafted in the First Committee should be included in the second revision of the negotiating text.

106. With regard to the work of the Second Committee, his delegation was not fully satisfied with the proposed text regarding underwater oceanic ridges (see A/CONF.62/L.51). However, it was prepared to support the proposed compromise formula, and also endorsed the provisions concerning the commission on the limits of the continental shelf.

107. He agreed with the Chairman of the Second Committee that the proposal concerning an exceptional method of delimitation applicable to special geological and geomorphological conditions should be strengthened by adopting a declaration which would be included in the final act of the Conference.

108. His delegation also supported the inclusion in the second revision of the negotiating text of the proposed new wording of article 65. However, he urged that a proposal by eight socialist countries for the immunity of sunken warships and non-commercial vessels should be included in articles 95 and 96. The attempt to reopen negotiations on matters already settled, on the pretext of protecting fish-stocks, would jeopardize progress and he firmly rejected it.

109. A satisfactory compromise had been achieved in the Third Committee with regard to the proposed amendments to articles 242, 247, 249 and 255 (see A/CONF.62/L.50). He also agreed that the compromise wording of articles 246, 253, 254 and 264 improved the prospects for consensus. The necessary conditions now existed for preparing the second revision of the negotiating text on the issues dealt with by the Third Committee. All the issues relating to maritime law were interrelated and must be dealt with as a single package.

110. Negotiating group 7 had paid special attention to the settlement of disputes concerning sea boundary delimitation (see A/CONF.62/L.47). His delegation considered the existing wording of article 298, paragraph 1 (a), totally unacceptable, as it envisaged compulsory arbitration of such issues irrespective of the wishes of the States concerned, which was an infringement of their sovereignty. The Soviet Union could not accept such an obligation, and was convinced that agreement on sea boundaries could only be achieved by negotiation or other methods agreed by the parties. However, as the wording proposed was a compromise formula which had achieved wide support at the Conference, his delegation would not oppose its inclusion in the second revision of the negotiating text. The same applied to articles 74 and 83.

111. Mr. FAIDUTTI (Ecuador) said that his delegation could support, in principle, the draft preamble proposed by the President (A/CONF.62/L.49), which reproduced several points which the Group of 77 regarded as fundamental. Respect for and effective application of the principle, of the common heritage of mankind must be the basis for the new legal system governing the equitable exploration and exploitation of the sea-bed, and for the establishment of an authentic, just and equitable international economic order. The preamble must therefore contain a clear provision on that principle.

112. His delegation could also support the proposal to establish a preparatory commission (see A/CONF.62/L.55) to prepare the way for the entry into force of the convention and the functioning of the Authority. Such a Commission should have only *recommendatory* powers, however.