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Report of the Chairman of the Second Committee

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Regarding paragraph (c), it was noted that this referred to a "plan of work". The point was made that this wording implied that the Sea-Bed Disputes Chamber would have jurisdiction over disputes between the Authority and the Enterprise. Strong and widespread opposition was recorded to this possibility on the basis that, since the Enterprise was an arm of the Authority, any possible conflict between them should be resolved by the Council of the Authority. It was urged that some formulation be arrived at whereby the possibility of the Chamber exercising jurisdiction over such disputes should be avoided at all costs.

The question was raised as to whether article 187, subparagraph (c) (i), dealt with disputes only between the Authority, as one party, and the other possible contractors. If that was the case, it was suggested that the reference to "plan of work" be deleted. On the other hand, the point was made that there should be provision covering disputes between contractors who had independent contracts with the Authority although they did not have a contract between themselves. If this interpretation was not possible under article 187, paragraph (c); it was a question that needed resolution and would have to be considered at the beginning of the next session.

Regarding article 187, paragraph (d), some wanted it deleted while others wanted to strengthen it by eliminating the necessity to comply with any conditions. It was the Chairman's impression, in the light of the discussions, that the existing text represented the best basis for a possible compromise. Concern was expressed as to the possibility of unsuccessful applicants impeding the work of those to whom contracts had been awarded by bringing disputes and obtaining restraining orders from the Chamber.

A proposal was made to provide for jurisdiction of the Chamber in disputes between prospectors and the Authority, but there was a lack of support for such provision, it being pointed out that prospectors had no contractual rights to be safeguarded.

No points were raised regarding articles 189 and 190 dealing, respectively, with advisory opinions and limitations on the jurisdiction of the Chamber. The Chairman noted that the group found these acceptable and there was no desire expressed to make any changes in the text.

There was much discussion on the question of the appearance and participation in proceedings of sponsoring States, and a clear division of views regarding article 191, paragraph 2. On the one hand, it was argued that such a provision was necessary to protect the juridical personality of a State. In this respect, it was noted that, according to the general principles of international law, a State always enjoyed immunity from legal process compared to a natural or juridical person, and that therefore a safeguard clause, whereby the State sponsoring the applicant person must join the proceedings, was needed. Counter to this argument was the view that a State could not be compelled to participate in the proceedings merely because its sponsored natural or juridical persons wished to bring a claim against another State. It was felt that this should be a matter of discretion with the State. Supporters of this view advocated the deletion of paragraph 2.

In the spirit of compromise, it was suggested that perhaps paragraph 2 could be reformulated whereby the Chamber would have no jurisdiction in cases where the sponsoring State of a natural or juridical person did not agree to participate in the proceedings. An alternative compromise was suggested whereby the respondent State party could nominate a natural or juridical person of its own nationality to participate in the proceedings in its place. A combination of these two suggestions led to further consultations which provided the basis for the revised draft of article 191 in appendix A above. This draft could seem to command widespread support.

6. OTHER ISSUES

All drafting suggestions made in the course of the negotiations or submitted to the Chair have been closely examined and wherever practicable have been incorporated in the Chairman's suggested text. Due regard was given to avoiding the inclusion of any drafting suggestions that might have had implications on substantive issues. It was suggested, however, by many participants that the texts should be examined as a whole for consistency and accuracy of drafting and translation. Reference was also made to the need to examine the titles of all articles and some changes that were agreed upon have been incorporated in the new draft.

The sequence of the articles may need to be changed. In this regard it was suggested that article 189 concerning advisory opinions appear last or as a separate section.

DOCUMENT A/CONF.62/L.42

Report of the Chairman of the Second Committee

[Original: Spanish]
[24 August 1979]

1. The Conference decided to establish seven negotiating groups to concern themselves with the most difficult questions. Three of those groups, negotiating groups 4, 6 and 7, were to concern themselves with matters which were completely or partially within the competence of the Second Committee.

2. At the present resumed eighth session, only negotiating groups 6 and 7 held meetings. Negotiating group 4 did not hold any meetings.

3. The Second Committee also devoted a number of meetings to the consideration of other questions, apart from those which were within the competence of the negotiating groups. I shall refer to those meetings later in this report.

NEGOTIATING GROUPS

4. Negotiating group 7, presided over by Mr. E. J. Manner of Finland, concerns itself with the definition of the maritime frontiers between adjacent States and between States whose coasts lie opposite each other—subjects within the competence of the Second Committee—and with the settlement of disputes related thereto, a matter dealt with by the plenary Conference.

5. Negotiating group 6, of which I am Chairman, is concerned with the definition of the outer limit of the continental shelf and the question of payments and contributions in connexion with the exploitation of the continental shelf beyond 200 miles, or the question of revenue sharing.

6. At its 126th informal meeting on 22 August 1979, the Second Committee received the reports of the Chairmen of negotiating groups 6 and 7 on the work done during the current second stage of the eighth session.

7. Owing to lack of time and in order to avoid duplication of work, it was agreed that no substantive comments would be made concerning the report of Mr. Manner on the work of negotiating group 7, since any delegations interested in commenting could do so in the plenary Conference. The report will be published as informal document NG7/45. I wish to express once more my gratitude to Mr. Manner for his untiring efforts to find solutions to the problems dealt with by his group.

8. My report to the Second Committee on the activities of negotiating group 6 is contained in informal document paper NG6/19, which is now in the hands of delegations. I do not propose to repeat it in this forum and shall merely refer in a general way to the group's work. Negotiating group 6 held five meetings, and at its meeting of 13 August 1979, at the request of several delegations, it established the so-called group of 38, an open-ended group formed on the basis of registration of delegations interested in dealing with the same subjects in a smaller framework. The group of 38 also held five meetings and considered the following items: the outer limit of the continental shelf; payments and contributions for the exploitation of the continental shelf beyond 200 miles; submarine oceanic ridges; the commission on limits; and the problem of Sri Lanka.

9. Concerning these items, delegations presented various informal suggestions which helped to determine more precisely the various positions and the possible solutions. I hope that the deliberations and extensive consultations held during this stage have prepared the ground for finding satisfactory solutions on these items at the next session.

OTHER MATTERS

10. There were two informal meetings of the Second Committee devoted to other matters than those assigned to

negotiating groups 4, 6 and 7. The items considered were dealt with in accordance with the numbering of the articles of the revised informal composite negotiating text. The items were the following:

Article 25, paragraph 3

The informal suggestion by Belgium to add the words "or for the safety of ships" at the end of the first sentence of article 25, paragraph 3, was incorporated into the text in accordance with the recommendation I made in my report presented at the 116th plenary meeting on 27 April 1979. The proposing delegation stated that, as a result of new consultations, the words quoted should be replaced by the words "including weapons exercises", with the explanation that the amendment related to artillery exercises carried out by the coastal State.

Article 36

Informal suggestion by Yugoslavia (C.2/Informal Meeting/2/Rev.1), to add the following: "in such routes the freedoms of navigation and overflight shall not be impeded".

Article 56

Informal suggestion by Afghanistan, Austria, Bolivia, Lesotho, Nepal, Singapore, Uganda, Upper Volta and Zambia (C.2/Informal Meeting/45), proposing payments or contributions in kind by the coastal State into a common heritage fund from the proceeds accruing to it from the exploitation of the non-living resources of the exclusive economic zone. The Authority would determine the rate of the payments and contributions, taking into account the relative capacity of the States to make such payments and contributions. The Authority would also make disbursements to the States parties to the convention on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries, particularly the least developed and the land-locked countries among them. The Authority might also make disbursements to protect the marine environment, to foster the transfer of marine technology, to assist the work of the United Nations in those fields and to help finance the Enterprise.

Article 62

Informal suggestion by Romania and Yugoslavia (C.2/Informal Meeting/1/Rev.1) to insert, in paragraph 2, after the words "other States", the words "developing States in particular"; to delete, in the same paragraph, after the words "articles 69 and 70", the rest of the sentence; and to insert, in paragraph 3, after the words "of developing countries", the words "in particular, those".

Article 63, paragraph 2

Informal suggestion by Argentina (C.2/Informal Meeting/48) to delete the word "seek" and replace it by "be obliged"; and to add, at the end of the paragraph, an additional text specifying the measures to be included in the respective agreements and stating that, if no agreement is reached within a reasonable period of time, the State fishing for the stocks mentioned in paragraph 2 of the article should abide by the regulations issued by the coastal State for the conservation of such stocks.

Article 65

Informal suggestion by the United States of America (C.2/Informal Meeting/49) for a text reading: "Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. In this connexion, States shall co-operate with a view to the conservation of marine mammals and, in the case of cetaceans,

shall in particular work through the appropriate international organizations for their conservation, management and study". This suggestion was not discussed by the Committee because the delegation making the proposal introduced it for the sole purpose of subsequently receiving the comments of other delegations.

Article 70

In connexion with this article, a document entitled "The stand of the Socialist Republic of Romania with regard to the right of access to the fishing resources in the economic zones" (C.2/Informal Meeting/42) was submitted. In this informal document it is proposed that the article should be supplemented, after paragraph 4, by an additional text stating that the geographically disadvantaged States bordering enclosed or semi-enclosed seas poor in biological resources, particularly the developing countries located in a subregion or region which is also poor in biological resources, should have the right to participate, on an equitable basis, in the exploitation of biological resources of the exclusive economic zones of the coastal States located in other regions or subregions, under the conditions provided for by the article.

Article 77

Informal suggestion by Cape Verde, Greece, Italy, Malta, Portugal, Tunisia and Yugoslavia (C.2/Informal Meeting/43/Rev.1) to add a new paragraph 5 giving the coastal State sovereign rights over any object of an archaeological and historical nature on or under its continental shelf for the purposes of research, salvaging, protection and proper presentation. The State or country of origin, or the State of historical and archaeological origin, would have preferential rights over such objects in the case of sale or any other disposal resulting in the removal of such objects out of the coastal State.

Article 98

Informal suggestion by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (C.2/Informal Meeting/44) to add a paragraph 3 providing that, without prejudice to the provisions of the convention and other universally recognized rules of international law, sunken ships and aircraft, as well as equipment and cargoes located on board them, may be salvaged only by the flag State or with its consent.

Article 121

Informal suggestion by Ireland (C.2/Informal Meeting/46) to replace, in paragraph 2, the words "except as provided for in paragraph 3", but "without prejudice to the provisions of articles 15, 74 and 83 and except as provided for in paragraph 3".

Article 121 bis

Informal suggestion by Ecuador ((C.2/Informal Meeting/47) to add a new article to the effect that the territorial sea, the exclusive economic zone and the continental shelf of a group of islands forming part of the territory of a State which constitute an archipelago as defined in article 46 (b) should be determined through the system of baselines drawn in accordance with article 47. This suggestion was not discussed by the Committee at the request of the delegation making the proposal, to enable it to be studied and thus facilitate its consideration at the next session.

11. Thus, most of these informal suggestions were considered by the Committee and the proposing States have a clear idea of the extent to which they are accepted.

12. I should like to express my sincere thanks to the delegations participating in the work of the Second Committee for their valuable co-operation in the conduct of our programme of work, to the members of the secretariat of the Conference for their dedication and competence in the performance of their functions, to the interpreters, the translators and all the staff co-operating in this resumed eighth session.

DOCUMENT A/CONF.62/L.41

Report of the Chairman of the Third Committee

[Original: English]

[23 August 1979]

1. I have the honour, in accordance with the decision of the Conference, to submit for your consideration, the report on the work of the Third Committee during this resumed session. The report was considered at the 41st, 42nd, and 43rd meetings of the Committee.

2. As I have pointed out in my previous report (A/CONF.62/L.34),³⁷ in view of the progress of the negotiations made during the first part of the eighth session at Geneva and the very important positive results that were achieved, the substantive negotiations on part XII (Protection and preservation of the marine environment) and part XIV (Development and transfer of marine technology) could be considered as completed. As far as part XIII (Marine scientific research) is concerned, I pointed out in that report that, though there was substantial support for the informal composite negotiating text, and for the maintenance of the delicate balance achieved so far in the over-all package with regard to that part, several delegations maintained that they should have the opportunity to continue the negotiations on the outstanding issues relating to marine scientific research. It was agreed that we should try at this session to make an effort to broaden the basis for agreement on the pending issues.

3. Accordingly, at this resumed session, our efforts were directed to the consideration of the pending substantive issues relating to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles from the baselines from which the breadth of the territorial sea is measured as well as the problem of the settlement of disputes relating to the interpretation or implementation of the provisions of this convention with regard to marine scientific research.

4. There were also some other substantive issues still pending, such as the facilities with regard to access of research vessels to the harbours of the coastal State and assistance to be rendered to such vessels conducting marine scientific research activities; the requirement for making the research results internationally available through appropriate national or international channels; the conditions for cessation or suspension of marine scientific research activities; the assistance or co-operation for providing the research vessels with information necessary to prevent and control damage to the health and safety of persons, or to the marine environment; the modalities under which marine scientific research projects could be undertaken under the auspices of an international organization etc. Informal proposals on most of these issues are contained in documents MSR/2/Rev.1, MSR/3, MSR/4 and MSR/5. At the last moment, a new proposal contained in document MSR/5 was submitted which sought to amend some of the provisions contained in article 254 relating to the rights of the neighbouring land-locked and geographically disadvantaged States.

5. These proposals were considered at six informal meetings of the Third Committee. Intensive negotiations were

also conducted through informal consultations with delegations directly concerned.

6. During these informal meetings and consultations some compromise formulae have emerged which in my personal assessment have such a considerable degree of support as to provide a reasonable prospect for consensus. These compromise formulae refer to articles 242, 246 *bis*, 247, 249, 253, 255 and 264. They are contained in an annex to this report. In my view these provisions could serve as a basis for a subsequent agreement leading to the revision of the negotiating text.

7. I wish to reiterate that, in our attempts to broaden the basis for a reasonable compromise in the field of marine scientific research, we should not lose sight of the fundamental principles of the newly emerging law of the sea and the need to keep a viable and equitable balance between the interests of all States. This has been our main concern throughout the work of the Third Committee. Evaluating the results of this session, I believe that we have succeeded in our endeavours to search for compromise formulae that do not upset the delicate balance which constitutes the very foundation of the régime for the conduct of marine scientific research. It is my submission that the compromise formulae, which emerged from the intensive negotiations during this session, are altogether the result of certain concessions made from the delegations which held opposing views. This is, indeed, the only way to achieve a compromise which provides the basis for mutual agreement. Of course, this does not mean that there is no room for improvement of the formulations contained in my report. Unfortunately, owing to lack of time during this session, we could not complete the consideration of these proposals.

8. Turning to the specific formulations and considering them in the light of the debate that took place in the Third Committee, I should like to state the following: first, the formulations on articles 242, 247 and 255 (with some drafting amendments) have acquired widespread support and therefore they can be considered as generally acceptable; secondly, on the other formulations, concerning articles 246 *bis*, 249, 253 and 264, most of the representatives expressed support in substance for the underlying basic concepts and there have been suggestions for drafting amendments. However, certain delegations opposed in principle some of these proposals or parts of them. But even they did not oppose a further consideration of those proposals. In my view, the main trends in the debate and the prevailing desire to reach a compromise represent in themselves an encouraging feature. This is, indeed, a promising avenue for our future work.

9. In conclusion, I wish to extend to all the members of the Third Committee my gratitude for their co-operation and goodwill, which enabled us to make substantial progress in our negotiating efforts. I wish also to pay special tribute to the members of the secretariat for their dedication, competence and most valuable assistance rendered to the Committee in the discharge of its mandate.

ANNEX

Compromise formulae emerging from the intensive negotiations during the resumed eighth session

Article 242

Add the following sentence at the end of the paragraph:

"In this context, without prejudice to the rights and duties of States under this Convention, a State in the application of this Part shall provide, when appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and the environment."

Article 246 *bis*

For the purposes of article 246:

(a) The absence of diplomatic relations between the coastal

³⁷*Ibid.*