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47th meeting of the First Committee

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FIRST COMMITTEE

47th meeting

Tuesday, 1 April, 1980, at 11 a.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

Tribute to the memory of Mr. Ton Duc Thang, President of the Socialist Republic of Viet Nam

On the proposal of the Chairman, the representatives observed a minute of silence in tribute to the memory of Mr. Ton Duc Thang, President of the Socialist Republic of Viet Nam.

Report of the co-ordinators of the working group of 21

1. The CHAIRMAN said that any review of the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) would not represent the final stage in the negotiations; therefore no delegation need fear that it was being forced to adopt a convention at the present time. The Committee could either adopt the suggestions contained in the reports before it or try to improve on them. He invited delegations to make any suggestions which might enhance the likelihood of reaching consensus by revising the existing negotiating text, reminding them that the Committee's responsibilities related to Part XI of that text.

2. Mr. de SOTO (Peru), speaking as the co-ordinator of the Group of 77, said that in the view of the Group of 77 the text before the Committee should be seen as one further stage in the negotiations. The Group had focused on the question whether the new texts contained elements for preparing a second revision of the negotiating text which would prove a better basis for negotiations than the existing text. In order to answer that question, they had borne in mind the fact that any revision which was produced by the end of the current session would be simply a second revision, not the final revision, and that as such it would have exactly the same status as the first revision.

3. If such a second revision was to prove a better basis for negotiations, the Group of 77 considered that some changes must be made in the proposals submitted by the co-ordinators of the working group of 21 (See A/CONF.62/C.1/L.27). Without listing all the Group's proposals or expressing the Group's position on every point since the co-ordinators' text did not cover all the issues before the Committee (it did not contain new proposals concerning decisions in the Council, clearly a subject for later negotiation and one on which the Group reserved its position), he would simply touch on the four main questions that must be considered as a matter of priority.

4. With regard to article 155, paragraph 5, the Group felt that the majority needed at the review conference in order for amendments to enter into force should be two thirds rather than three fourths as currently proposed. It had noted that the new text contained no reference to the Assembly's ability to impose a moratorium on new work plans.

5. Turning to annex II, article 5, on the transfer of technology, which contained provisions that in the Group's view were crucial in order to ensure the viability of the parallel system, he said that they would favour restoring to the text the provision concerning the prohibition of use of technology on which the contractor had not obtained security of transfer. It would also like to see included in the new text the penalties against the

contractor and supplier of technology that existed in article 5, paragraph 1 (b) of the revised negotiating text. Paragraph 8 of that same article should be worded more specifically, and consideration should be given to including mineral processing in that paragraph.

6. In connexion with article 151, the Group considered that in the last sentence of paragraph 2 (b) (iii), which related to a safeguard clause in case of variations in the minimum ceiling, the percentage should be reduced from 100 per cent to 80; alternatively, consideration could be given to the possibility of reducing the minimum ceiling below 3 per cent.

7. With regard to the Enterprise, although very substantial progress had been made regarding the financial agreements, the Group of 77 had been somewhat disappointed with the provisions concerning fiscal status, particularly with article 9 concerning payments by the Enterprise to the Authority and the provisions relating to national taxation in article 12, paragraph 5.

8. Those were the questions regarding which the Group of 77 would like to see changes made as a matter of priority. The fact that it did not comment on other points did not mean that it was tacitly agreeing to them. It was the Group's understanding that negotiations would continue on the basis of the revised negotiating text and that the second revision would have the same status as the first. It would raise questions in relation to other matters on a later occasion.

9. Mr. OUYANG CHUPING (China) said that his delegation wished to make some initial comments on a few points. Concerning the transfer of technology, the text before the Committee, specifically article 5, paragraphs 3 (b), (c) and (d), was an improvement on the revised informal negotiating text, and his delegation welcomed it. However, the text did not resolve two important questions. The first was how the Authority could obtain effective assurance that the necessary technology would be made available to it. The text should contain an explicit provision calling for the applicant, in acquiring the technology from the owner, to request the latter to provide legally binding written assurance that, if and when the Enterprise so requested, he would transfer the technology to the Enterprise on the same terms as those on which it had been made available to the operator. The second unresolved question was how to ensure that the Enterprise could obtain the necessary technology for integrated operations; as had been stressed many times, the Enterprise required technology for processing and refining as well as exploration and exploitation. Under article 5, paragraph 5, the applicant was not required to commit himself to transfer processing technology, nor were the States parties to the convention bound by the provision. The text therefore needed to be improved.

10. Turning to article 155 concerning the review conference, he said that the provision relating to the suspension of operations had been replaced by a set of very complicated procedures for the amendment and entry into force of the

convention. The developing countries had originally maintained that, according to the principle of the common heritage of mankind, exploration and exploitation should be carried out by the Authority, which represented all mankind. However, taking into account the views of some developed countries, they had agreed to a parallel system on the understanding that it would be a temporary arrangement which would be subject to review at a conference. While the revised negotiating text was not very satisfactory on the subject of the review conference, it did contain a provision whereby the Conference could decide, by the majority required for questions of substance, to suspend with immediate effect the granting of new contracts. The new text contained no such provision, and the suggested procedure for amending the parallel system would be a very lengthy process and would destroy the basis on which the developing countries had agreed to the parallel system in the first place. Accordingly, while appreciating the difficulties involved, his delegation could not accept article 155 as contained in the co-ordinators' text.

11. With regard to production policies, the co-ordinators' text constituted a great improvement over the revised negotiating text as it co-ordinated the production policies with the interim period provided for the review conference and made many reasonable changes. As to the key question, namely, how to protect both the interests of land-based producers and those of consumer States, he felt that emphasis should be placed on the interests of developing countries which were land-based producers. As to the suggestions relating to the specific minimum production ceiling, a question that was still somewhat controversial, his delegation would take into account the various opinions and reach a conclusion.

12. With regard to the financial arrangements, he observed that the question of guaranteeing funds for the first mining site of the Enterprise was very complicated, since, in the early period after the entry into force of the convention, it was likely that only a few countries would have ratified the latter and that the Enterprise would therefore not have sufficient funds available. Further study was needed to determine how to secure additional funds. Perhaps the mining countries should provide the necessary funds. With regard to article 12 of annex III concerning legal status, immunities and privileges, his delegation believed that the original negotiating text was satisfactory. The Enterprise should not be treated like any other contractor. Moreover, since the Enterprise would have to buy its equipment and machinery from the industrialized countries, it would have a very heavy financial burden to bear if it was not given tax-exempt status. The proposed text merely said that the Enterprise would negotiate with the host countries for immunity from taxation. It did not guarantee that such exemption would be granted. The original text was therefore preferable.

13. With regard to the percentages and figures contained in article 12 of annex II, his delegation merely wished to point out that they had been calculated on the basis of exploitation of the manganese nodules. It was necessary to have proof whether the same percentages and figures were applicable to other minerals as well.

14. Turning to article 161 concerning the voting system in the Council, he said that, if the Authority was to function normally, the system adopted should ensure that the Council would not be paralyzed by an improperly formulated blocking vote or by other important procedures. In order to protect the interests of the various interest groups, it should be possible to agree on a system of blocking votes. However that system should be used only in connexion with a few clearly specified substantive questions. At the same time, the number of votes required in order to block should not be too small, and the blocking vote should not constitute a disguised veto by a group or a few countries. With regard to the special interests of geographical regions, his delegation agreed in principle that they should be protected. However, owing to the great difference in the size of

the various regional groups, China was opposed to any measure that would enable one group to join with a few members of another group to cast a collective negative vote to block passage of a proposal when there was a reasonable majority in favour of it. That would be very unfair and would give the power of veto to a small number of countries.

15. Mr. YARMOLOUK (Union of Soviet Socialist Republics) expressed regret that the consultations on the decision-making mechanism in the Council had not led to a final compromise, but pointed out that the rejection during the session of the idea of dividing substantive matters into the important and the less important, and setting the number of votes needed to block a decision at less than 10, was a most significant development. Such a formula would have been discriminatory and would have undermined the basis for compromise concerning the Council as a whole.

16. The Soviet Union considered that the formulation contained in the revised informal composite negotiating text, article 161, paragraph 7, represented the best compromise solution on the question of decision-making in the Council. However, having regard to other delegations' objections, it believed that a formula calling for the adoption of decisions by a two-thirds majority would be possible provided that the draft convention included a provision that no decision would be adopted in the Council if the States of any of the five geographical groups specified in article 161 voted unanimously against it. Such a provision would safeguard the principle of equality among different social systems and groups of States. It should not be undermined by the additional stipulation that one or more other States must join the geographical group concerned in voting against a proposal. Decisions in the Council could be reached only on a mutually acceptable basis. Any other approach would render participation in the Authority impossible for a number of States. The adoption of such a principle would then permit the development of a provision protecting the interests of States in special categories.

17. The proposed amendments to articles 157, 158 and 160 could, in his delegation's opinion, be included in the draft convention.

18. The compromise text on the exploration and exploitation of resources in the area offered a genuine basis for solving that difficult problem. Although the new text dealing with the transfer of technology for the exploitation of nodules would create certain difficulties for future contractors, his delegation was prepared to support it if satisfactory solutions were found to the other questions before the Committee, especially that of the decision-making process in the Council.

19. It was regrettable that the Soviet proposals on application of the anti-monopoly provision to reserved sites and on not extending the provision on Enterprise priority to joint ventures with private entities had not been incorporated into the new proposals in annex II. Their inclusion would make it possible to prevent a small number of private companies and multinational corporations from monopolizing the exploitation of the sites reserved for the Authority.

20. The new formula for the "floor" in article 151 appeared flexible enough, subject to certain small clarifications, to protect the interests of exporting countries. The imposition of a limit on nickel production under any one contract was a significant step. Although the compromise text set the limit at an inflated level, acceptance of the principle was an important step forward in that it would provide an opportunity for more applicants to exploit the resources of the area.

21. His delegation took a favourable view of the new text of article 155, which, while designed to command a consensus, took the interests of the developing and other countries into account.

22. The new texts relating to financial matters should command the support of the overwhelming majority of delegations

and groups of States. The level of support for article 12 of annex II was such that the Committee could recommend incorporation of that draft into the second revision of the negotiating text and cease to discuss article 12. His delegation would be prepared to support such a proposal, although it had difficulties with the concession of certain privileges inherent in a mixed, as opposed to a unified, payment system.

23. The disagreement over the financing of the Enterprise's first project had been largely overcome, although several Governments would clearly have problems in defining clearly the limits of their obligations in that respect. As far as the statute of the Enterprise was concerned, his delegation favoured giving limited autonomy to the Enterprise in its day-to-day affairs but did not share some delegations' desire to diminish the role of the Council in the running of the Enterprise. The latter should be an international executive unit of the Authority and should safeguard the interests of all countries.

24. The presentation of a complete compromise formula on the use of commercial arbitration for contractual disputes represented a substantial step towards a consensus.

25. The compromise positions reached in the Committee on a number of previously unresolved matters reflected marked progress: their inclusion in the revised draft convention would help to consolidate that success and pave the way for the final, generally acceptable settlement of First Committee questions at the forthcoming session at Geneva.

26. Mr. ENKHTSAIKHAN (Mongolia) said that the most difficult question yet to be resolved within the Committee was that of decision-making in the Council and the outcome of discussions on that issue would doubtless have a direct impact on all the major issues of the Conference. Bearing in mind the elements outlined in part IV of document A/CONF.62/C.1/L.27, paragraph 14, his delegation had joined with others in working out a compromise formula based on well-established international practice in decision-making. The new formulation would read: "All decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members participating in that session and also provided that a simple majority of members in any two of the categories referred to in paragraph 1, or that all members of any geographical region provided for in paragraph 1, have not cast negative votes."

27. The requirement that, in order to reject a decision, a simple majority of any two categories should cast negative votes, would ensure that no single State or special category of States would have blocking power, while still reflecting the existence of special interests; the requirement of negative votes would lay the burden of blocking a decision on the minority opposing it, and the number of negative votes required to block a decision would be substantially higher than under other systems of decision-making, while, at the same time, abstentions would benefit the majority and not the minority. Moreover, under the proposed formulation only unanimously negative votes from any geographical region would block a decision. The importance of geographical regional groups in universal international forums was clear: it would be extremely difficult to take effective decisions if the interests of any regional group were not reflected or if the decisions taken were contrary to the interests of any group. The importance of the proposed formula lay, therefore, in its recognition that any binding decision taken in disregard of, or even against, the interests of a whole geographical regional group would be neither realistic nor effective, but only counterproductive.

28. Any formula that disregarded those considerations, including the various formulas permitting decisions to be blocked if any regional group plus one or two more States cast negative votes, would be ineffective, confusing quantity with quality—the number of votes required to block a decision with the very concept of a regional geographical group.

29. Mr. ALDRICH (United States of America) said that much had been accomplished in the process of negotiating a text which would be generally acceptable. On certain remaining key issues, the discussions had narrowed the range of disagreement and brought the Committee closer to a mutual understanding of the types of protection that would have to be devised for those whose economic interests could be most adversely affected. Like the co-ordinator of the Group of 77, his delegation believed that the content of the reports was not totally satisfactory but felt that, as a whole, the reports would constitute a better basis for further negotiations than the texts they replaced and should, therefore, be incorporated into the second revision of the negotiating text. His delegation did not rule out all possibility of further improvements being made on the basis of real negotiations and consultation, and it was prepared to engage in consultations for that purpose.

30. His delegation had great difficulties with the proposed texts of articles 140 and 151. The figure of 3 per cent laid down in paragraph 2 (b) (iii) of the latter article was too low, while the limitation to 100 per cent of the growth in nickel consumption might restrict sea-bed mining in later years just at a time when minerals from the sea-bed might be most needed. With regard to the proposed text of article 5, dealing with the transfer of technology, his delegation was still opposed to the clause providing for licensing for developing countries and believed that the time-limit imposed by the text on undertakings was unnecessarily long. Similarly, it retained certain reservations as to the safeguards and limitations imposed on States' undertakings by paragraph 5.

31. With regard to the financing of the Enterprise, his delegation believed that further work was needed to place a more effective limitation on the potential liability of States Parties for contributions to the capital of the Enterprise. The new limitations laid down in part III of the report were a step in the right direction but did not go far enough. If they were allowed to remain, his delegation would be agreeing to the possibility of assuming a total percentage far in excess of anything his Government was prepared to contribute to international organizations. His delegation felt it was very important that the schedule for the repayment of interest-free loans should be set out in the rules and regulations to be prepared by the preparatory commission. He noted that the discussions on dispute settlement had not, in the view of a number of delegations, been completed, and he felt that part V of the report inadequately reflected that fact. On the whole, however, the report was excellent.

32. Mr. SEALY (Trinidad and Tobago) suggested that at the end of the proposed text of article 5, paragraph 3 (b) of part II of the report, the following sentence should be added: "In all other cases, should an owner of technology refuse to honour his assurance when requested to do so by the Enterprise, subsequent assurances by such owner shall not be accepted". He suggested also that, in the last sentence of paragraph 3 (c), the words "would create a presumption that such measures have not been taken" should be replaced by the words "shall be considered relevant to the applicant's qualifications for any subsequent proposed plan of work and may also result in the suspension or termination of his ongoing contract with the Authority in appropriate cases" and that, in paragraph 8, after the word "system", the words "for the purpose of carrying out the activities set forth in article 170" should be inserted.

33. In addition, he suggested that article 161 should be amended by replacing the first sentence of paragraph 1 by the following: "The Council shall consist of 36 members of the Authority elected by the Assembly on the basis of the principle of equitable geographical distribution and taking into consideration the need for continuity and rotation so as to ensure in the over-all composition of the Council representation of the following special interests:" and by the insertion of a new paragraph 1 *bis* to read:

"The 36 seats on the Council will be allocated among the different regions in the following manner:

Africa	9
Asia	7
Latin America	6
Eastern Europe	3
Western Europe.....	11"

34. Finally, he suggested that, in article 161, paragraph 7, the words "three-fourths majority" should be replaced by "two-thirds majority". In that respect, he pointed out that the total number of delegations from Asia, Africa and Latin America would be 22, whereas a two-thirds majority would be 24. The transfer of two seats on the Council to Western Europe would ensure that the former group of delegations would be obliged to negotiate and seek a consensus or to obtain the support of either Western European or Eastern European delegations.

35. Mr. MUELLER (Federal Republic of Germany) said that, despite the excellence of the reports before the Committee, his delegation retained many of its basic reservations concerning the economic and legal approach being adopted by the Committee. Among the most important issues was that of resource policy, and his delegation believed that the proposed text of article 150 had not achieved the proper balance. His delegation still believed that the resources of the sea-bed should not be regarded as a buffer stock which could be opened or closed as needed. With regard to the proposed text of article 151, his delegation was disappointed that a concept had crept in which it thought had been deleted, namely that the Authority was to be authorized to represent all the production from the area in commodity agreements: in the view of his delegation, that was not the correct approach to the question. His delegation still had difficulty with the concept of production limitation in general and felt that the Conference was, in general, adopting the wrong approach to that matter; however, it would, of course, carefully examine the new proposals before the Committee. In the final analysis, the important question would be whether any progress made in securing access to the sea-bed would be rendered meaningless by a production limitation which resulted in too few mine sites for the development of the resources and the technology involved.

36. The transfer of technology itself remained a very thorny issue, and his delegation did not agree that the obligations

which companies would have to enter into should be extended to individual countries. It believed that the solution for individual countries lay in bilateral negotiations and should not be incorporated into the convention. He regretted that the proposals made with a view to providing a clearer definition of fair and reasonable commercial conditions had not been reflected in the report.

37. Other very difficult issues remained, especially the question of third-party technology, which had become a prerequisite for obtaining a contract. His delegation still believed that the question of whether the Enterprise had been able to find technology on the open market should either be decided by the Council, rather than by the parties themselves, or be subject to binding commercial arbitration.

38. With regard to the review conference, he welcomed the apparent abandonment of the notion of a moratorium but felt that the new proposal might create serious legal problems and would require very careful study. The Council itself continued to be one of the major problems, and he stressed that any solution must safeguard the vital interests of investors and consumers if it was to be acceptable as part of the over-all package. His delegation believed that the financial burdens were still too high and regretted that some of the proposals it had made to alleviate those burdens had not been incorporated into the text. Financial burdens should not be considered in isolation but should be viewed as a part of the obligations to be borne by States' industries: if issues such as production limitation, the banking system and financial limitations were not viewed as a whole, they might ultimately prevent investments by industries in the sea-bed. The financing of the Enterprise should be kept separate from the question of financial arrangements for companies and industries.

39. His delegation believed there was a need for further informal negotiations in groups and was willing to participate in such negotiations. Despite the considerable problems presented by the report, his delegation recognized that the texts could form a better basis for further discussion. It agreed with the representative of the United States that any changes in the text should be the outcome of negotiations and should not be based on general statements made in the First Committee. Finally, he pointed out that his delegation did see certain difficulties in the proposals made by the Group of 77.

The meeting rose at 1 p.m.

48th meeting

Tuesday, 1 April 1980, at 3.15 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon)

Report of the co-ordinators of the working group of 21 (concluded)

1. Miss MARTIN-SANÉ (France) observed that the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.27) marked a new stage in the negotiating process and in many respects provided a more interesting basis for negotiation than the revised informal composite negotiating text. It would be useful if a second revision of the text were produced on the basis of the report in time for the summer session at Geneva. However, her delegation was not entirely satisfied with the report, for reasons which obviously differed from those put forward by the Group of 77 at the last meeting.

2. With regard to article 140, her delegation was not convinced by the arguments of the Chairman of negotiating group 1. The failure to specify that the advantages derived from the area were to be shared only among States parties to the con-

vention was due to a very literal interpretation of the reference to the benefit of mankind contained in General Assembly resolution 2749 (XXV). Her delegation was therefore unable to accept the present wording of the article.

3. With respect to the conditions of production, it should be recalled that the wording of article 150 had not been subject to any negotiation during the current session. Several of its provisions raised serious difficulties for the French delegation. The results of the negotiations on production limits for nodules were extremely disappointing. While the new text was an improvement over the wording of the revised negotiating text, the production ceiling now proposed represented only a marginal gain for producers.

4. Her delegation could not support the new wording proposed for article 155, concerning the review conference. It was not acceptable for amendments binding on all States par-