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A/CONF.62/WS/3

Statement by the delegation of Mongolia dated 3 April 1980

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Ninth Session)*

(b) With regard to the question of delimitation, my delegation firmly believes that the basic element in this field should be the agreement between interested States and equitable principles, by taking into account all relevant factors. The islets that are uninhabited and without their own economic life should not have negative effects vis-à-vis the maritime spaces which belong to the main coasts of the respective States. Pending an agreement between States concerned, the parties shall not take any unilateral measures which jeopardize or hamper the reaching of the final agreement. The present revised negotiating text, concerning the settlement of disputes resulting from delimitation is unacceptable to my delegation. We can go along with the proposals of the Chairman of negotiating group 7 and we can accept compulsory conciliation (See A/CONF.62/L.47).

(c) We have to reaffirm our well-known position that innocent passage through the territorial sea of foreign warships must be submitted to the prior authorization of or notification to the coastal State. In this respect we should remember that a proposal was made during the present session to this effect, which has had widespread support in the Second Committee. Such a provision is based on present international law, the long practice of States and on national legislations, including my own country's laws. It is understood that such a provision cannot affect navigation through international straits. It is our conviction that all these proposals will be reflected in an objective manner in the second revision of the negotiating text.

(d) Regarding the outer limit of the continental shelf, we do not see sufficient support either for the provisions of the negotiating text, or for the new amendments made to article 76 during this session. We consider that the extension of the continental shelf beyond the 200 miles—provided in those texts—is

excessive. It affects considerably the common heritage of mankind and the sharing revenues do not compensate the large losses suffered by the international community as a whole.

8. We believe that in the elaboration of the second revision of the negotiating text, the above-mentioned considerations should be taken into account with the attention they surely deserve.

9. As is well known, consensus means the achievement of generally acceptable solutions through equal participation of all States and duly taking into consideration their positions and interests. The positions and interests of each country should be fully respected on the basis of the principles of sovereign equality, which is applicable to all participants irrespective of the size and the technological and economic capacities of their countries.

10. In spite of the late stage of our negotiations, there are some other important political, legal and practical issues which have not been thoroughly discussed in all their aspects; we are referring to the preamble and the final clauses.

11. It is our firm conviction that at the resumed session at Geneva we shall have appropriate conditions for a profound and complete examination of these questions, so that a harmonious convention—governed by clear principles conforming with the new principles of international relations and especially with the objectives of a new international economic order—can be adopted.

12. My delegation is fully prepared to make any necessary efforts in order to reach an agreement on all still controversial issues and we hope that the other delegations will proceed in the same manner, in a spirit of genuine co-operation and understanding.

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*[Original: English]
[10 April 1980]*

1. My delegation joins other delegations in expressing its appreciation to the President of the Conference and the Chairmen of the three committees, negotiating groups and groups of legal experts for the fruitful work that you, as a team, have undertaken during the last two years and which has found its due reflection in the reports presented.

2. In the view of my delegation, the work of this part of the ninth session of the Conference was productive. Most of the complicated issues were considered and successfully solved, and the Conference, in general, moved closer toward the final drafting of a global and comprehensive convention on the law of the sea. It should be noted that considerable progress has been made especially in the Second and Third Committees.

3. The preamble of the future convention was discussed in several meetings of the informal plenary and the text that emerged, as presented by the President (A/CONF.62/L.49), is acceptable to our delegation. It is neither too long nor too short, non-controversial and non-polemical, and, what is most important, it emphasizes that the convention shall be of historic significance and an important contribution to the maintenance of peace, justice and progress for all the peoples of the world. We are also pleased to note that the preamble expressly notes that the problems of ocean space are closely interrelated and need to be considered as a whole.

4. The questions of the First Committee were thoroughly discussed and progress was made towards arriving at a mutually acceptable text for further negotiations in the field of transfer of technology, financing of the Enterprise etc. The anti-monopoly clause in paragraph 3 (d) of article 6 in annex II could be acceptable to my delegation if its provisions would

equally be applicable both to reserved as well as non-reserved areas.

5. The most difficult question yet to be resolved within the First Committee, and in fact within the Conference, is the question of decision-making in the Council. It is a very sensitive political and legal issue with far-reaching implications, the outcome of which, as was rightly mentioned, will in fact determine whether the Council shall be an effective instrument of co-operation of States or an instrument of discrimination, permitting one group of States to impose its views on others. Its immediate outcome, no doubt, would have direct impact on all major issues of the Conference, including composition of the Council, competence and balance of power between the Assembly and the Council, etc.

6. My delegation agrees with paragraph 14 of part IV of the report of the co-ordinators to the First Committee (A/CONF.62/C.1/L.27 and Add.1), which points out that broadly speaking the four elements which, during negotiations, appeared to commend consensus were the necessity for attaining consensus or decisions, an over-all majority, a protective blocking minority for interest groupings, and protective blocking by geographical regions—i.e. ensuring that no decisions will be taken which are opposed by the totality of any given region.

7. Bearing all these elements in mind, my delegation, together with some other delegations, has worked out a compromise formula and presented it orally to the First Committee. It is based on the well-established international practice in decision-making and at the same time takes into account the specifics of the Conference and the issues involved. Thus we

suggested that, if a three-quarters majority was to be changed, the first sentence of paragraph 7 of article 161 should be replaced by a provision whereby all decisions on questions of substance would be taken by a two-thirds majority of the members present and voting, provided that such majority included a majority of the members participating in that session, as stated in the revised negotiating text, 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 had not cast negative votes.

8. The two new elements in the suggested formula that are required for decisions—which would be binding decisions and not merely recommendations—to pass would be either that a simple majority in any two of the five categories or all members of any geographical region have not cast negative votes. The reasons for inclusion of these two elements are as follows. It is a fact that under qualified majority principle in decision-making a whole group of States can be outvoted, i.e. decisions contrary to its interests can easily be adopted. In the absence of other restrictive rules in the decision-making, the organ may easily lose its original character (i.e. serve as a body representing all groups of States, as an instrument of co-operation of States in achieving common aims) and turn into an instrument serving exclusively the interests of a group or groups possessing this qualified majority. It is for this purpose that some form of safeguards are envisaged in decision-making mechanisms.

9. As my delegation has already pointed out in the First Committee, the provision that any two of the categories have not cast negative votes ensures, and I shall simply enumerate them, that, first, not a single State or a special category of States, whether it be of category (a), (b), (c) or (d) has by itself blocking power; secondly, that while not according any one of these categories of States blocking power, the formula would at the same time reflect reality, i.e. existence of special interests and, by requiring simple majority in any two of the categories for the decisions to pass, underlines each and every group's weight and importance; thirdly, the requirement of negative votes to block a decision would lay the burden of blocking the decision on the minority, opposing the majority; fourthly, the number of required negative votes to block the decision would be much higher, and in this case twice higher than under other systems of decision-making; and fifthly, unlike under other systems of decision-making, abstentions would benefit the majority and not the minority.

10. The second element of this formula would require that only unanimity of negative votes in any geographical region would block the decision. Importance of geographical regional groups is evident from the fact that in all universal international fora organs of United Nations system, including the non-permanent membership in the Security Council of the United Nations, the principle of equitable geographical distribution is strictly adhered to. The case under consideration is no exception. While paragraph 1 of article 161 specifies the special interest categories that should be represented in the Council, paragraph 1 (e) nevertheless stipulates that half of the 18 remaining members should be elected "according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole". The idea is that the representation in special interest groups should not alter the general distribution of seats as a whole. Even the protracted, painstaking negotiations in the working group of 21 have clearly

demonstrated that the main difficulty in working out a decision-making mechanism for the Council is in the end to balance regional group interests. It would be extremely difficult to have effective and weighty decisions if interests of any of the regional groups were not reflected or were contrary to these interests. Therefore the importance of this formula lies in its recognition of the fact that any binding decision, taken in disregard of or even against the interests of a whole socio-political system or of any one of the geographical regional groups as a whole, would not be realistic or effective and would only be counter-productive. In like manner, any formula built in disregard of the aforementioned facts, including various formulas permitting blocking of decisions if any of the regional groups plus one or two States have cast negative votes would be ineffective because it would confuse quantity with quality, the number of mechanical votes required to block decisions with the very concept of geographical regional group. My delegation expresses the hope that, at the resumed session at Geneva, this complicated issue can be resolved to the benefit of all socio-political and regional groups, to the benefit of international community as a whole.

11. We commend the work done by the group of legal experts on the settlement of disputes relating to Part XI and my delegation has no difficulty in supporting the agreed text.

12. The question of the definition of the outer limit of the continental shelf, in our view, has been thoroughly discussed and examined. The proposal of the Chairman of the Second Committee (A/CONF.62/L.51) is not fully satisfactory to our delegation, likewise to many of the members of the group of the land-locked and geographically disadvantaged States. Nevertheless, we could agree to such a major concession to the broad-margin States in the hope that this spirit of mutual accommodation will in future also be manifested on their part as far as the rights and legitimate interests of the land-locked and geographically disadvantaged States are concerned.

13. We fully support the proposal to amend the last sentence of article 76, paragraph 3, to the effect that the continental margin does not include the deep ocean floor with its oceanic ridges or the subsoil thereof. Likewise we agree with the proposal that the limits of the shelf established by a coastal State on the basis of the recommendations of the commission on the limits of the continental shelf shall be final and binding. It is the hope of my delegation that the future commission shall be composed in such a manner as to reflect the interests of the land-locked and geographically disadvantaged States. In like manner, our delegation could agree with annex II on the statute of the commission.

14. As to the work of the Third Committee, like other delegations, we commend its Chairman for the excellent and fruitful work done during this part of the session and for having succeeded in reaching consensus on the questions relating to marine scientific research, namely on articles 242, 247, 249 and 255 (see A/CONF.62/L.50). In our view the establishment of a different régime on marine scientific research on the continental shelf beyond the 200-mile limit is fully justifiable, especially in the light of the tendency in the Conference to extend the continental shelf beyond 200 nautical miles.

15. Before concluding, my delegation would like to support the overwhelming view that, owing to the progress made during this part of the session by the Conference, the presidential team should make the second revision of the informal composite negotiating text.