Third United Nations Conference on the Law of the Sea

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Report by the President on the recommendations of the General Committee on the organization of work for the resumed ninth session

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

DECLARATION ISSUED AT LIMA ON 22 JULY 1980

The States members of the South Pacific Commission have repeatedly expressed their unanimous view that the exploitation of the mineral resources of the sea-bed and ocean floor beyond the limits of national jurisdiction must take place exclusively under an international régime which ensures the full and effective application of the principle that this area and its resources constitute the common heritage of mankind, and which at the same time prevents the occurrence of harmful effects for the economies and incomes of those developing countries that are exporters of the minerals concerned. In addition, the Governments of these countries have recommended more than once that co-ordinated action be undertaken.

Accordingly, and in compliance with this expression of their resolve, the secretariat of the South Pacific Commission makes the following Declaration:

Resolution 2749 (XXV), adopted by the United Nations General Assembly on 17 December 1970 at its twenty-fifth session solemnly laid down the principles which govern the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, and declared these to be the common heritage of mankind. Consequently, the Area is not to be subject to appropriation by any means by States or persons, which shall not be able to claim or exercise sovereignty or sovereign rights over any part of the Area or its resources.

The above resolution refers to and confirms resolution 2574 D (XXIV), adopted by the General Assembly at its twenty-fourth session and containing the "Declaration of Moratorium"; it establishes that no State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the Area or its resources incompatible with the international régime to be established and the principles of the common heritage of mankind.

It also provides that, on the basis of the principles which it lays down, "an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon".

The General Assembly therefore adopted resolution 2750 (XXV) to form with the foregoing an indissoluble whole; this convened the Third United Nations Conference on the Law of the Sea to deal with "the establishment of an equitable international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction . . . and a broad range of related issues", which taken as a whole constitute the agenda of the Conference.

Resolution 2749 (XXV) had the character of a solemn declaration and was adopted without any opposing vote. This particular fact, by means of which the international community freely expressed its consent, reveals its will to bind itself and respect the rules laid down in the resolution. Accordingly, it may not be ignored and even less circumvented by unilateral actions which involve an intention to coerce other States; which compromise the principle of good faith that is the basis of all international negotiation; and which undermine the foundations of the Charter of the United Nations, which lays down the sovereign equality of all its Members.

Furthermore, it should be recalled that, although the negotiation of this resolution did not fully satisfy the views expressed in the discussion, all sides respected the agreement not to submit amendments subsequently, thus implicitly recognizing the Declaration of Principles as the outcome of a process of universal co-operation in the search for new rules of law having the character of *jus cogens*, namely, that of peremptory rules of international law from which no derogation is permitted.

In the light of these circumstances, the enactment by the United States of America of a law intended to benefit those enterprises of that country which seek to exploit the sea-bed for their own account is unacceptable. Its application lacks validity in the community of nations and carries a heavy international responsibility, since no State possesses the power to distribute the natural resources situated in an international area which is the common heritage. A step of this kind would obviously constitute a breach of the rules of international law, which are at the basis of the co-existence of the peoples of the world, their harmonious development and the maintenance of the necessary conditions for ensuring peace and solidarity.

At the same time, this unilateral action jeopardizes the lengthy deliberations and the results of the Third United Nations Conference on the Law of the Sea which is about to reach its culminating point.

This grave situation has led the secretariat of the South Pacific Commission, on behalf of the Governments of Chile, Colombia, Ecuador and Peru, to transmit the text of the present Declaration to the Secretariat of the United Nations, the President of the Third United Nations Conference on the Law of the Sea, and the international organizations, bodies and specialized agencies involved.

DOCUMENT A/CONF.62/102

Report by the President on the recommendations of the General Committee on the organization of work for the resumed ninth session

[*Original: English*]
[*28 July 1980*]

I recalled that at the 129th meeting on 8 April 1980[3] in New York I informed the Plenary that, bearing in mind the decision of the Conference that it must complete its work by the end of the ninth session, I wished to make certain suggestions regarding the organization of the work and time-table during the resumed session.

I had proposed that the first two weeks be devoted to the continuation of negotiations on all outstanding issues and that discussions would continue concurrently in Informal Plenary on the final and general clauses and the Preparatory Commission. I had suggested that, under the circumstances that would exist at the start of the resumed session, it would be necessary to decide what sort of negotiating structure, suited to the new circumstances, should be adopted. At the beginning of the third week, namely 11 August, the general debate would start and speakers would be allowed 15 minutes each. I reiterated my hope and my appeal that issues that were, by and large, settled would and should not be re-opened. At the end of the fourth week the Collegium would prepare the third revision of the informal composite negotiating text, which might be given the status of a basic text. No decision was taken on that occasion and it was agreed that

[3] *Ibid.*, vol. XIII (United Nations publication, Sales No.E.81.V.5).

this matter would be taken up at the very start of the resumed session.

I emphasized in the General Committee that the time at our disposal was very limited and that we had a very strict schedule. If we were to adhere to it we must make the best use of the time available for continued negotiations on outstanding and unresolved issues and that meant proceeding forthwith to negotiate.

I had the opportunity of consulting with the Chairmen of the Committees and the Chairman of the Drafting Committee regarding the organization of our work at this resumed session.

Before going into these details I informed the General Committee that the Chairman of the Group of 77 had informed me that he wished to make a statement on behalf of this Group concerning the unilateral legislation enacted for the regulation of exploration and exploitation of the mineral resources of the international area of the sea-bed by the United States of America.

If we are to attempt to comply with our time-table we have only 10 working days for negotiations before the start of the general debate at the end of which the Collegium would have to effect the third revision. The general debate would be conducted at the end of the fourth week.

If the negotiations and consultations are to be expedited it is necessary that delegations be made aware of the proposed arrangements with specific information of the organization of work, including the negotiating framework, the issues to be dealt with, in what order and when.

The organization of our work should be adapted to suit the prevailing circumstances in regard to each of the outstanding issues and the status of the negotiations on the issue in question. All negotiations would best be conducted in an appropriate forum and manner with due regard to the need to ensure the involvement of the parties principally concerned but without excluding any others interested in participation. Any group should be representative of all the main interests but should be compact enough to permit of smooth, workmanlike and speedy progress.

As for the First Committee all groups are agreed that the established negotiating forum, the Working Group of 21, should be retained. It will identify the outstanding questions and thereafter decide how best to continue the negotiations on outstanding questions. The results of such negotiations, as of all the negotiations of a similar character, should be reported at regular intervals to the President and to the Chairman of the Main Committee concerned or, if so required by the circumstances, by the Chairman himself to the President. This is not intended to be a formal report but is meant to keep the President informed of the progress of the negotiation and to help him with the task of co-ordinating the work of the Conference.

The other two Committees will proceed similarly to the extent they deem fit and necessary.

DOCUMENT A/CONF.62/103

Letter dated 30 July 1980 from the representative of the United States of America to the President of the Conference

[Original: English]
[1 August 1980]

I have the honour to request that the attached statement, which I delivered at the 130th Plenary Meeting on 28 July 1980, be reproduced as an official document of the Conference.

(Signed) E. RICHARDSON
Head of the Delegation
of the United States of America
to the Third United Nations Conference
on the Law of the Sea

STATEMENT MADE BY THE REPRESENTATIVE OF THE UNITED STATES AT THE 130TH MEETING

Mr. President, I appreciate the early opportunity to reply to the statement of the distinguished Chairman of the Group of 77.

My government remains committed to pursuing in good faith the goal of an early and successful outcome of this Conference. We hold steadfastly to the view that a broadly accepted law of the sea convention is by far the preferred legal framework for the conduct of deep sea-bed mining and other activities in the oceans.

The deep sea-bed mining law enacted by the United States is consistent with that objective. It is expressly interim in nature. When a treaty enters into force with respect to the United States, it will automatically supersede the legislation. Moreover, the law places a moratorium on commercial recovery until 1 January 1988, some 20 years after the United Nations first began to deal with this subject. This moratorium should allow ample time for the convention to come into force.

United States legislation was enacted at this time in order to prevent a further decline or a complete disintegration of the United States deep sea-bed mining industry. Were such an outcome to occur, a decade or more would surely be required to regain the level of technology needed for commercial recovery. Keeping the industry alive is clearly in the common interest. Unless the development of technology continues, the benefits that we all seek from sea-bed mining under a convention will be postponed into the far distant future.

I do not regard it useful to debate again the legality of deep sea-bed mining under international law. I have stated the position of the United States several times over the past two and one-half years: namely, that sea-bed mining beyond areas of recognized national jurisdiction remains a freedom of the high seas until and unless circumscribed by an international agreement in force. I refer all my colleagues to earlier statements for the detailed arguments. As their delegations have already made clear, a number of other countries whose nationals are presently engaged in developing deep sea-bed mining technology share this legal position.

Disagreement over the principles of international law that would apply in the absence of a broadly accepted law of the sea convention must not be allowed to stand in the way of this Conference's efforts to extend the rule of law over more than two thirds of the earth's surface. If we succeed, the practical question of commercial recovery of minerals outside the treaty régime need never arise. My delegation will continue to direct all of its energies toward this end. Our negotiating objectives remain precisely as they were prior to the enactment of our legislation. They will not be hardened or increased, nor will they be abandoned. And we will support provisions that encourage the earliest practicable entry into force of the convention.

We stand ready to join all delegations in redoubling our efforts to conclude a comprehensive convention on the law of the sea that we all can ratify and that will assure the wise and orderly management of the world's ocean resources for the benefit of all mankind.