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49th meeting of the First Committee

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FIRST COMMITTEE

49th meeting

Friday, 22 August 1980, at 11 p.m.

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

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

1. Mr. WAPENYI (Uganda), speaking as Chairman of the Group of 77, said that, while the Group of 77 did not unanimously endorse the revisions suggested by the co-ordinators (A/CONF.62/C.1/L.28/Add.1), it would not object to their incorporation in the new revision of the negotiating text. He emphasized that the agreement of the Group of 77 to co-operate in that matter, in order to advance the work of the Conference, would not preclude individual members of the Group from expressing reservations concerning points on which they felt strongly and on which they wished to have their views taken into account.
2. Mr. RICHARDSON (United States of America) said that the revision suggested by the co-ordinators represented a significant step towards the preparation of a comprehensive text which could be adopted by consensus. His delegation would reserve its comments on a number of questions with which it had difficulty. The suggested amendments satisfied the criteria for incorporation into the revised text which would emerge from the current session of the Conference.
3. Mr. OUYANG Chuping (China) said that the voting procedure provided for in the revised text of article 161, as suggested by the co-ordinators, was extremely cumbersome and could give rise to all sorts of difficulties. However, his delegation realized that the revised text was the result of lengthy negotiations and that no other more appropriate solution had been found. Consequently, if the text was acceptable to the majority, his delegation could also endorse it. Nevertheless, he wished to suggest three modifications. First, the number of questions to be dealt with under paragraph 7 (c) should be reduced and those to be dealt with under paragraph 7 (b) should be increased by the inclusion of, for example, matters referred to in article 162, paragraph 2 (e) and (k). Secondly, decisions as to the category to which a given question belonged should be taken by a two-thirds majority. Thirdly, questions not listed in article 162, or not specified in the rules, regulations and procedures, should be dealt with in accordance with the procedure described in article 161, paragraph 7 (b).
4. The provisions in annex III, article 13, paragraph 1 (e), were absolutely necessary in order to ensure that the Enterprise could engage in mining effectively at the same time as States parties and/or public or private enterprises seeking to embark on international sea-bed exploration and exploitation. Consequently, the fee levied by the Authority on contractors exploiting the Area must be sufficient to enable the Enterprise to engage in exploration on its own behalf. The figures contained in article 13 of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) must represent a minimum and not be reduced. Since international sea-bed exploration was a new undertaking, the figures set out in the negotiating text should be regarded as provisional and be revised subsequently in the light of actual

conditions. Concerning the capital needed by the Enterprise to exploit the first mines, he noted that the new text did not seem to provide for financial resources which could compensate for any shortfalls in financial contributions. If the Assembly was left to deal with the matter by the adoption of measures by consensus, it was likely that it would remain unresolved.

5. The text concerning the transfer of technology needed by the Enterprise to carry out exploration activities was an improvement. However, two important questions remained unresolved. First, the transfer of processing technology should have been dealt with in annex III, article 5, paragraph 3, instead of being relegated to paragraph 5 of that article, which removed any guarantee that the Enterprise would be able to obtain such technology. Secondly, the time-limit for the transfer of technology, as defined in article 5, paragraph 7, was unnecessary.

6. Mr. RIDRUEJO (Spain) said that, when the representatives of the small and medium-sized industrialized States had called for reconsideration of article 161, paragraph 1 (a), with a view to increasing the possibility of their reasonable participation in the Council, they had been told that it would first be necessary to consider paragraph 7 of that article, concerning the adoption of decisions. That paragraph had since been reviewed and seemed to meet with general approval. There was reason to hope, therefore, that in future negotiations the demands of the small and medium-sized industrial States would be taken into account, with a view to ensuring their representation on the Council by any procedure compatible with the decision-making system described in the document before the Committee. The question was of the utmost importance for his delegation and for a number of others. The financial burdens to be borne by the medium-sized industrial States would be very heavy. If, in addition, the ability of such States to participate in the management of the Authority was restricted unreasonably, it would be difficult to convince the Spanish Parliament of the advisability of ratifying the convention at the appropriate time or making the necessary contributions to the financing of the Enterprise.

7. The CHAIRMAN reassured the representative of Spain that consultations on the question would continue in order to find the best possible solution.

8. Mr. MOLANDER (Sweden) associated himself with the views expressed by the representative of Spain. Throughout the eighth and ninth sessions, the understanding had been that the position of the small and medium-sized industrialized countries concerning the composition of the Council would be examined in detail when the question of voting procedures had been resolved. Unfortunately, it was clear that no consensus yet existed concerning the wording of article 161, paragraph 1. He thanked the Chairman for his reassurances that consultations on the question would continue.

9. Some clarification of the wording of article 161, paragraph 2

- (c), was needed, since it was not clear whether the word "group" referred to interest groups or regional groups.
10. The CHAIRMAN said that the amended wording of article 161, paragraph 2 (c), simply reflected established practice in the United Nations system. When a number of seats were allocated to a regional group, it was customary for the group itself to nominate the delegations which were to represent it.
11. Mr. YARMOLOUK (Union of Soviet Socialist Republics) said that his delegation, while not completely satisfied with all the suggested revisions contained in the documents before the Committee, regarded them as a reasonable compromise. Consequently, it would not oppose any of the suggested amendments, which should be included in the third revision of the negotiating text.
12. Mr. WUENSCHÉ (German Democratic Republic), speaking as Vice-Chairman of the group of legal experts on the settlement of disputes relating to Part XI, said that a number of delegations had expressed the view that the provisions of article 188, paragraph 1, would require further consideration with a view to improvement of the text. As he had been involved in consultations concerning questions dealt with in negotiating group 1, he had not had time to convene a further meeting of the group of legal experts. However, if a future opportunity arose to re-examine the question, he would be happy to convene the group.
13. Mr. NAKAGAWA (Japan) welcomed the revisions suggested by the co-ordinators. Though there were still points that were not entirely satisfactory, the suggested revisions marked a step forward in the work of the Conference and should be incorporated in the revised version of the negotiating text.
14. Mr. REVERDIN (Switzerland) associated himself with the view expressed by the representative of Sweden concerning the understanding that the composition of the Council was to be discussed after the completion of negotiations concerning the procedure for the adoption of decisions in the Council. Article 161, paragraph 1, was unsatisfactory since it excluded certain small and medium-sized industrial States from participating in the work of the Council. His delegation remained open to any solution designed to guarantee each State the possibility of occupying a seat on the Council at some stage. His delegation would favour a reasonable increase in the number of members of the Council, along the lines suggested by the Chairman of the Group of 77. That proposal was not intended to call in question the voting procedures or categories of interests as defined in the paragraph in question.
15. Article 161, paragraph 2 (c), was unclear and seemed unnecessary.
16. Mr. LUCAS (Federal Republic of Germany) said that the package of provisions before the Committee was very complex and should be subjected to very careful consideration. Like the delegation of Japan, his delegation had difficulty with a number of the proposed revisions, including article 150 (d) and the question of the financing burdens to be borne by industry, which were much too heavy. He would refer to those matters in detail in the plenary meetings of the Conference.
17. Mr. MAZILU (Romania) reminded members that almost exactly one year previously his delegation had requested the special representative of the Secretary-General to prepare a concise study showing how much each State party would have to contribute to the administrative budgets of the Authority, the Law of the Sea Tribunal and other organs to be established under the future convention, and also to determine each State's contribution to the budget of the Enterprise. Unfortunately, there had been no response to that request and he wished to repeat it. Such a study would provide Governments with important information concerning their future financial obligations. The figures should be based on the existing negotiating text but should take account of the proposals made at the current session.
18. Mr. ZULETA (Special Representative of the Secretary-General), referring to the observations made by the representative of Romania, said that the Committee's records contained no reference to any formal decision by the Committee that such a study should be prepared. It was the practice of the Secretariat to prepare studies only when officially requested to do so by the competent organs of the Conference. If the Committee felt that the time had come to prepare such a study, the Secretariat would make every effort to ensure that it was made available to delegations in time for the following session.
19. Mr. GAYAN (Mauritius), noting that a document on seabed mineral resource development and recent activities of the international consortia had been published by the United Nations, said it would be helpful if a copy could be made available to each delegation.
20. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to request the Secretariat to prepare the study requested by the representative of Romania and to circulate to all delegations the publication referred to by the representative of Mauritius.
- It was so decided.*
21. Mr. HAFNER (Austria) shared the view that in future deliberations on the composition of the Council members should not lose sight of the need for the adequate representation of the small and medium-sized industrial countries.
22. His delegation, too, had had some difficulty with the wording of article 161, paragraph 2 (c), and thanked the Chairman for his clarification of that matter.
23. Mr. DORON (Israel) said that his delegation might wish to make detailed observations on the suggested revisions at a later stage.
24. He wished to reiterate his delegation's position concerning the need for the proper, adequate and fair representation, in the relevant organs of the Authority, of all small and medium-sized countries without discrimination and bearing in mind the various criteria set forth in article 161, paragraph 1. He also reiterated his delegation's reservations concerning the wording of article 140 and article 160, paragraph 2 (f) (ii).
25. Mr. LARES (Finland) said that the documents before the Committee appeared to provide an equitable solution to some of the most difficult outstanding issues before the Conference. He considered the new proposal concerning the system for the financing of the Enterprise to be a marked improvement over the previous text, since it would not be disadvantageous to States which ratified the future convention at an early stage. With regard to the system for the adoption of decisions in the Council, the proposed provisions seemed to provide a solution which was acceptable to the various interest groups involved and took account of the need to preserve the delicate balance within the Council. He congratulated the Group of 21 on their achievements. He was also prepared to support other proposed revisions emerging from the consultations on Part XI and annexes III and IV.
26. However, he noted with regret that, thus far, it had proved impossible to find a formula which would allow for the adequate representation in the Council of small and medium-sized industrialized countries. He supported the views expressed by the representatives of Spain, Sweden, Switzerland and Austria on that point. Under the provisions contained in the second revision of the negotiating text, such countries would be excluded from membership of the Council for excessive periods, because they did not fall within any specific interest category. However, he was convinced that that problem could also be solved.
27. Mr. BEESLEY (Canada) said that, while he understood the reservations expressed regarding a number of questions, particularly the composition of the Council, there seemed to be general agreement that, despite the difficulties remaining, progress had been made on that and other outstanding issues. His delegation wished to reserve its position concerning production policies and, in particular, was unable to accept the unchanged 3 per cent floor, the unchanged 100 per cent safeguard, or the wording of the market-access clause. His delegation, together with others, had submitted a number of proposals whose wording had re-

quired arduous efforts and expressed the hope that support for them would be reflected in the third revision of the negotiating text.

28. He asked for clarification as to whether article 161, paragraph 2 (c), was intended to mean that, within the categories listed in paragraph 1 (a), (b), (c) and (d), members of the Council would be chosen on the basis of traditional geographical groupings.

29. The CHAIRMAN said that the provision in question had been based on existing practice. Countries which fell into particular categories usually met and reached a mutually satisfactory arrangement. If it proved impossible to reach an agreement, as many candidates as possible were proposed and an open vote was held.

30. Mr. MANANSALA (Philippines) associated himself with the views expressed by the representative of Uganda on behalf of the Group of 77. His delegation saw a marked improvement in the revised text, but still had difficulties with a number of questions and, in particular, with production policies. For the time being, his delegation would join the consensus which seemed to be developing with regard to the revised text and hoped that the matters on which it still had reservations would be the subject of further negotiation.

31. Mr. POWELL-JONES (United Kingdom) said that the revisions suggested reflected the important developments which had taken place in the negotiations both within the Committee and within the Conference as a whole. If incorporated in their entirety into the third revision of the negotiating text, the revisions would represent a substantial step forward in the work of the Conference. The proposals themselves were of a complex nature, and he would recommend to the competent United Kingdom authorities that they should be given careful study.

32. With regard to voting procedures in the Council, his delegation could accept the general scheme proposed in article 161, paragraph 7, in the context of institutional arrangements which were acceptable in other respects. While the proposed system of voting, which called for consensus on a number of very sensitive issues, was not this delegation's preferred solution, he recognized that it offered the best chance for general agreement. However, he had made it clear in the recent consultations that his Government felt strongly that the policies referred to in article 162, paragraph 1, should be adopted by consensus. He expressed the hope that that view would be given further consideration.

33. The suggestions made at the current meeting concerning the composition of the Council would have to be assessed in the light of their possible impact on the voting provisions now proposed. He did not believe that the Committee would wish to upset the voting mechanisms which had been worked out.

34. The rules of procedure of the Council should be adopted by a three-fourths majority. However, it should be clearly understood that the rules should provide for adequate notice to be given to members of the Council before any proposal requiring a consensus decision was considered. Accordingly, Council members must be properly notified of all Council meetings and agendas. It was, of course, clear that the rules of procedure could not alter the procedures or the categories specified in the convention.

35. Articles 150 and 151 contained some of the most difficult provisions in Part XI. In the debate between land-based producers and potential deep-sea miners, the interests of the consumers had sometimes seemed to be overlooked. The revised texts, though representing an improvement in some respects, were difficult for his delegation, which was particularly concerned about the possible effects of the limitation of production provided for in article 151, paragraph 2.

36. With regard to the transfer of technology, his delegation's reservations concerning annex III, article 5 (e), remained.

37. He did not wish to leave the impression that his delegation's attitude was negative, and he expressed the hope that the remaining issues would be resolved at the following session.

38. Mr. TOLGAY (Turkey) supported the views expressed by the representatives of Spain, Sweden, Switzerland, Austria and Finland on article 161 concerning the composition of the Council.

39. Mr. MUDHO (Kenya) said that the observations made by the representative of Uganda reflected the basic position of his delegation. However, he could not agree that the document before the Committee had been considered exhaustively. Consequently, his delegation reserved the right to express its views on a number of issues at a later stage. He was sure that those views would be shared by other small and medium-sized developing countries.

40. Mr. GORALCZYK (Poland) said that the progress made at the current session on questions dealt with by the First Committee had brought the Conference closer to the achievement of a consensus. As his delegation had not had the opportunity to study thoroughly the revision suggested by the co-ordinators, it wished only to make a few preliminary remarks and to reserve the right to adopt a final position after detailed consideration of all the relevant documents.

41. In general, with some reservations, his delegation could accept the new proposals, which could be included in a third revision. In a spirit of compromise, his delegation was prepared to agree to the new proposals concerning voting procedure in the Council. In most cases, that procedure would lead to negotiated decisions which took into account the rival interests of all States and groups of States. In particular, he welcomed the provision which stipulated that certain categories of decisions should be taken by consensus. However, he was not sure that the taking of decisions by a two-thirds majority on questions arising under article 162, paragraph 2 (b) and (i), was entirely appropriate. His delegation would prefer such questions to be decided by a three-fourths majority.

42. His delegation maintained its earlier reservations and objections concerning the procedure for the financing of the Enterprise and considered that annex IV, article 11, paragraph 3 (d), represented a clear improvement over the previous text.

43. Miss MARTIN-SANÉ (France) welcomed the progress achieved by the First Committee at the current session. The text submitted provided a more promising basis for future deliberations. However, her delegation had a number of preliminary observations to make on a number of points.

44. Referring to the suggested revision of article 161, she said that the procedure provided for in paragraph 7, which had been supported by her delegation in principle from the outset, unquestionably represented a step forward in what had been particularly difficult negotiations. However, in view of the special nature of the Authority, it was most important that the main financial and budgetary decisions should be taken by the largest possible majority.

45. The new procedure provided for in article 162, paragraph 2 (j), for the approval of plans of work was quite complex, and her delegation wished to reserve its position until the text had been examined in detail by the competent French authorities.

46. Annex III, article 7, paragraph 5, had been improved slightly, but not sufficiently to make the anti-monopoly clause genuinely effective. Her delegation had repeatedly emphasized the need to include in paragraph 4 a provision according priority to States which did not yet have plans of work over States which already had two or more such plans. It continued to press for the inclusion of such a provision.

47. She noted that no change had been made to annex III, article 13. Her delegation consequently maintained its serious reservations concerning that article.

48. While annex IV had been slightly improved, her delegation still had difficulty with many of its provisions. It would also have observations to make concerning articles 140, 150, 151, 155, paragraph 4, 160, paragraph 2 (f), and 184, some aspects of annex III, article 5, and annex IV, article 3.

49. She noted with satisfaction the statement made by the rep-

representative of the German Democratic Republic concerning the possibility of continuing discussions on article 188, paragraph 1.

50. Mr. PINTO (Portugal) said that his delegation would make detailed comments in the plenary Conference on the revisions suggested.

51. Referring to article 161, paragraph 1, he said that his delegation had repeatedly expressed its opposition to that provision in the past, and the revised version contained nothing to change that position. The procedure for the election of members of the Council gave rise to serious doubts regarding observance of the principle of general participation in the administration of the common heritage of mankind.

52. He supported the observations made by the representatives of Spain, Sweden, Switzerland, Turkey and Finland concerning the problems of the medium-sized industrialized countries. He expressed the hope that the new revision would contain a new wording for article 161, paragraph 1, and that the financial questions referred to by a number of delegations would also be dealt with.

53. Mr. BRENNAN (Australia) said that, on the basis of a preliminary examination, his delegation could endorse the suggested revisions. However, his delegation's endorsement of article 150 was subject to the understanding that the amended wording of paragraph 2 (b) (iv) would involve no substantive change to the corresponding provision of article 151, paragraph 2 (b) (iii), as contained in the first revision of negotiating text. He was somewhat puzzled as to the precise meaning of article 161, paragraph 2 (c).

54. Referring to annex IV, article 11, paragraph 3 (f), he wondered why the Governing Board of the Enterprise was required only to be guided, rather than bound, by the relevant provisions of the rules, regulations and procedures.

55. Mr. ORREGO VICUÑA (Chile) said that, like many other members of the Group of 77, his delegation regarded the suggested revisions as a package, to be adopted or left pending collectively. Articles 150 and 151, although not perfect, were acceptable and took due account of all the principal interests involved. Within the Group of 77 and within some regional groups, consideration had been given to the situation of producers such as the producers of cobalt, who might be most seriously affected, and to ways of implementing a system of compensation when the time came for the formulation of the relevant rules, regulations and procedures. He agreed that priority should be accorded to discussion of the establishment of such a system.

56. Mr. USHEWOKUNZE (Zimbabwe) said that although considerable progress had been made with the drafting of a compromise text, a number of aspects of the text, including articles 150, subparagraph (i), 151, paragraph 2 (b) (iv), and 161, paragraph 7 (d), still presented difficulties. His delegation wished to reserve its position on those provisions until further consultations had been held.

57. Mr. MHLANGA (Zambia), referring to the question of production policies and, in particular, to the question of market areas, said that the resources taken from the Area to processing countries should be regarded by those countries as inputs, thereby helping to avoid discrimination between land-based and sea-bed producers. Furthermore, the amount of compensation to be awarded should be calculated on the basis of the damage suffered.

58. The text of annex III, article 5, concerning the transfer of technology, could be improved to ensure that developing countries received the technology which would help them in their activities, particularly in the Area. The Enterprise should also be provided with such technology.

59. Referring to article 155, relating to the review conference, he expressed concern that the provision concerning a moratorium had been deleted. It might be wise to reinstate that provision.

60. With regard to voting procedures, he considered that the measures referred to in article 162, paragraph 2 (l), should be adopted by a two-thirds majority, rather than by consensus.

61. On the question of compensation, he said that, if difficulties were encountered in negotiations, consideration could be given to the possibility of setting up a special fund specifically for the purpose of compensation, to be financed by countries participating in the exploitation of the Area, either directly or through commercial concerns, and by the Authority and the Enterprise.

62. Mr. SEALY (Trinidad and Tobago) said that his delegation was not satisfied with the provisions concerning the adoption of decisions in the Council. The position of the Group of 77, to the effect that questions of substance should be decided by a two-thirds majority, was completely eroded in the new text. The approach reflected in that text did not appear to take account of the geographical distribution of seats on the Council, in particular between the countries of the Group of 77 and the industrialized countries. It therefore cast doubt on the extent to which the Group of 77 would be able to participate meaningfully in the adoption of decisions in the Council. Moreover, while there could be no objection to the adoption of decisions by consensus, to require decisions to be taken by consensus was likely to paralyse the work of the Council. In particular, the rules, regulations and procedures of the Authority should not be adopted by consensus.

63. His delegation was convinced that the issues referred to in article 161, paragraph 7 (f) and (g), were of a procedural nature and should therefore be settled by a simple majority of the Council, as provided for in article 161, paragraph 7 (a). If provision was to be made for a consensus procedure, it should be defined in a more precise way in order to avoid any undue pressure being brought to bear on delegations wishing to oppose a given proposal.

64. Mr. ENKHTSAIKHAN (Mongolia) said that the proposed revisions to article 161 reflected the delicate balance achieved in long and painstaking negotiations. Consequently, any attempt to change those provisions might adversely affect the whole package and have far-reaching consequences. His delegation would comment more fully on other outstanding issues after further consideration.

65. Mr. RICHARDSON (United States of America) said that it would be a mistake, at the current stage, to alter the composition of the Council. The question of decision-making in the Council had been one of the most difficult issues facing the Conference from the outset. The classification of issues under different categories to be decided by a two-thirds or three-fourths majority or by consensus had been carried out with reference to the composition of the Council as provided for in the existing text. Consequently, his delegation would strongly oppose any enlargement of the Council and regarded the question as an integral part of the entire package before the Committee.

66. Mr. LUPINACCI (Uruguay) said that the position of the Latin American countries had already been stated by the representative of Uganda, who had spoken on behalf of the Group of 77. In addition, however, the Latin American countries wished to state that they did not regard the measure contained in article 151, concerning the protection of mining within national jurisdiction, as falling within the category of measures referred to in article 162, paragraph 2 (l).

The meeting rose on Saturday, 23 August, at 0.50 a.m.