Third United Nations Conference on the Law of the Sea

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140th Plenary meeting

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that text did not permit of reservations to exceptions or exceptions to reservations.

201. Lastly, the convention should include a generic text authorizing the participation of bodies such as the European Economic Community, the Andean Group and any existing or future regional groups under two conditions: firstly, that they did not prejudice the purpose of the convention; and secondly that no special advantages contrary to the provisions of the convention were created for them or any of their member States.

The meeting rose at 1.10 p.m.

140th meeting

Wednesday, 27 August 1980, at 3.40 p.m.

President: Mr. H. S. AMERASINGHE

General debate (*concluded*)

1. Mr. NORMAN (Angola) said that his delegation welcomed the progress achieved at the current session and opposed any attempt to enact unilateral legislation concerning the seas and oceans. With respect to production policies, they should be so designed as to avoid harming the interests of present and potential land-based producers in the developing countries. The provisions concerning compensation should be made more objective and more realistic. The Group of 77 should continue its work on developing more practical systems and giving practical form to the provisions of article 151, paragraph 4. In that connexion, Angola affirmed its solidarity with the brother peoples of Zambia, Zaire and Zimbabwe.

2. With regard to the review conference, it was unfortunate that the moratorium clause had been deleted without being replaced by other provisions intended to ensure respect for the principle of the common heritage of mankind. Thanks to the sacrifices agreed to by the Group of 77, a fairly happy solution had been found for the composition of the Council and the voting system. However, his delegation was not satisfied with the institutionalization of consensus. In its opinion, article 161, paragraph 7 (*g*), should be more flexible with respect to the required majorities, and it should be specified that the Assembly would have clear supremacy over the Council.

3. The clause concerning transfer of technology should be improved, in the spirit of the resolution adopted by the Organization of African Unity at Freetown (A/CONF.62/104): it should be made clearer and should compel States parties to transfer technology without any time limitation. Angola firmly supported the principle of the common heritage of mankind, which must also apply to peoples who had not yet attained independence.

4. Mr. ALATTYIA (Qatar), referring to the question of decision-making procedure in the Council, said that the member countries of the Group of 77 and the group of Arab States opposed the right of veto, which had the effect of paralysing activities. Decisions concerning the sharing of benefits should be taken by consensus. As for payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the words "and of peoples who have not yet attained independence" should be added at the end of article 82, paragraph 4. Article 70 should also be reworded to enable countries with special geographical characteristics to derive greater benefit from the living resources of the sea.

5. With respect to participation in the convention, national liberation organizations recognized by the United Nations, in particular the Palestine Liberation Organization and the intergovernmental regional organizations, should be allowed to accede to it. In the general provisions, the proposal concerning the basic principle of the common heritage of mankind as *jus cogens* was the cornerstone of the future convention. His delegation welcomed the results achieved by consensus and hoped that the Conference would continue its work in the same spirit of conciliation.

6. Mr. DJERMAKOYE (Niger) said that his delegation was closely following the work of the Conference, and especially the work which directly concerned land-locked developing countries such as the Niger and related to the provisions on the right of transit and access to the sea and the exploitation of the resources of the sea by land-locked and geographically disadvantaged countries (arts. 69, 70, 125 and 254). Although those provisions were wishy-washy in many respects, his delegation accepted them and would oppose any attempt to reopen the debate on those questions which was made with the aim of further diminishing the already modest rights granted to those countries. The Niger endorsed the principle of the common heritage of mankind adopted without objection by the international community in its Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)), and therefore welcomed the presence of article 136 in the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5). It would nevertheless be desirable to supplement that provision by recognizing that the concept of the common heritage of mankind was a preemptory norm of international law and a norm of *jus cogens*, in accordance with the amendment suggested by Chile and the amendment proposed by the Philippines.

7. In view of its attachment to that principle and to the convention as a basic element of the new international economic order, the Niger was seriously concerned about the enactment by certain States of unilateral legislation on the exploitation of marine resources. All the countries participating in the Conference, in particular the industrialized countries, must refrain from following that example, which would jeopardize all the efforts made since the beginning of the Conference. On the other hand, it would be very desirable to create a common heritage fund; such a measure would contribute to efforts to restructure international economic relations and would help to reduce the gap separating the rich from the poor countries.

8. It had already been emphasized that the bulk of sea-bed resources were situated in the exclusive economic zones of coastal States, in other words, within the 200-nautical-mile limit. It therefore seemed meaningless for the common heritage fund to draw solely on income derived from the exploitation of the area beyond that limit. The coastal States should withdraw their objections to the idea of establishing such a fund, in order that it might be put into effect by means of an appropriate provision in the draft convention.

9. It was unfortunate that the Second Committee had held hardly any meetings during that session and that negotiating group 6, which was responsible for questions relating to the definition of the continental shelf and payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles (arts. 76 and 82), had not met, apparently in order to avoid jeopardizing the delicate balance that had been achieved. His delegation was not satisfied with the wording of those two articles and would like them to be improved at the next session.

10. In the opinion of his delegation, the final consensus achieved represented a significant result, which it would not try to undo. Nevertheless, it should be recalled that in their declara-

tion at Freetown the heads of State and government of the Organization of African Unity had rejected any system of decision-making in the Council based on a veto, weighted voting or chamber voting. Several developing countries were also dissatisfied with the provisions concerning the transfer of technology and the composition of the Council. The Drafting Committee deserved praise for the considerable efforts it had made, but it was to be hoped that substantive changes would not be made in the negotiating text under the guise of purely editorial changes, in particular with respect to land-locked or geographically disadvantaged countries. The Drafting Committee would have to harmonize the different texts, and in particular the title of article 70, where the geographically disadvantaged countries had been called "States with special geographical characteristics". That wording would therefore have to be reconsidered at the next session, taking account of Romania's proposal on the access of such countries to the living resources of the sea (C.2/Informal Meeting/51). Furthermore, his delegation supported the principle of the participation in the future convention of States which were not yet independent and of national liberation movements recognized by the United Nations, the Organization of African Unity or other regional organizations.

11. Generally speaking, the package deal that had emerged from the present session marked an important step towards consensus, and its provisions should be included in the third revision. His delegation hoped that the international community would not disappoint the legitimate hopes of billions of human beings and that the countries participating in the Conference would display a genuine political will to conclude the long-awaited agreement. In particular, the coastal States had a responsibility to help the land-locked States to mitigate the effects of accidents of geography and history. The future convention would be an important element in the codification and development of general international law. The Niger, for its part, would scrupulously refrain from impeding that process, while at the same time reserving the right to make a final evaluation of the effects of the convention before ratifying it.

12. Mr. TUFUI (Tonga) said that his delegation attached great importance to the concept of the common heritage of mankind. It therefore regretted that it had not yet been possible, in paragraphs 4 to 6 of article 76 on the definition of the continental shelf, to include in that heritage all the resources of the sea-bed and the ocean floor and the subsoil thereof beyond the limit of 200 nautical miles. Article 82, providing for payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, seemed to indicate a certain guilty conscience. But the unilateral action taken by certain countries to exploit sea-bed resources beyond the limits of national jurisdiction was far more serious, even if assurances had been given that such exploitation would not begin before the entry into force of the convention. One might ask what the situation would be if no convention was concluded. All States were now sitting down together for the first time to work out a code of conduct to regulate that part of the globe, since hitherto only a small number of seafaring nations had applied customary international law. If unilateral action was not curbed, there was a danger that the law might be put back several centuries. His delegation therefore appealed to those who had taken unilateral action or were contemplating such action to take heed of the concern of all countries which had a right to benefit from the common heritage of mankind.

13. The questions of the financing of the Enterprise and the administrative costs of the Authority were matters of no less concern. Many small countries like Tonga would find it extremely burdensome to make a contribution on which there was little likelihood of a quick return. Some way must be found to alleviate the financial burden on such countries, for they might otherwise hesitate to ratify the convention.

14. The problem of the participation of countries which were not yet entirely masters of their political and economic destinies was also very important, and provision should be made for them in the third revision of the negotiating text.

15. The term "consensus" should not be defined in too restrictive a manner. On that point, his delegation fully shared the observations made by the delegation of France (135th meeting).

16. In view of the concessions made by so many delegations on vital issues in order to facilitate consensus, it was most unlikely that the convention would attract the number of signatures and ratifications it deserved without a provision for reservations. He supported the comments made by the representative of Romania on behalf of the geographically disadvantaged States (134th meeting) and hoped that they would be reflected in the forthcoming revision of the negotiating text.

17. Mr. WERNERS (Suriname) reminded the participants that while the Third Conference on the Law of the Sea was holding its general debate, a special session of the United Nations General Assembly devoted to economic development had just opened. That session marked the beginning of the Third United Nations Development Decade and the results of the Conference would influence the economic development of the world. The Conference had reached a decisive stage in its work, since the time had come to transform the negotiating text, after revision by the Collegium, into a basic proposal with the same status as the legal document usually considered at other codification conferences. Thus, at the first session of the United Nations Conference on the Law of Treaties, the rules of procedure of that Conference had stated that the draft articles on the law of treaties submitted to the Conference constituted the basic proposal for discussion. Although it was too late to change the status of the negotiating text at the current session, it was to be hoped that the next session would mark the successful conclusion of the work begun by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and pursued by the Conference.

18. It was clear from the report of the working group of 21 to the First Committee (A/CONF.62/C.1/L.28 and Add.1) that most of the proposed changes had been the result of diplomatic bargaining. The decision-making mechanism of the Council might be improved, but in view of the statement made by the Chairman of the Group of 77 on behalf of over 123 developing countries (135th meeting), the package deal proposed for the issues coming under the First Committee seemed to comply with document A/CONF.62/62, paragraph 10,[1] regarding modifications to be made in the negotiating text. His delegation could therefore accept it, bearing in mind that there was room for necessary amendments at a later stage, in accordance with rule 33 of the rules of procedure of the Conference.

19. With regard to Second Committee matters, Suriname was among the countries which had sponsored document NG7/10/Rev.2 on the delimitation of maritime boundaries between States with opposite or adjacent coasts. It therefore regretted that the two groups interested in that question had not been able to reach agreement on a new text that was satisfactory to the sponsors of the document and like-minded delegations. Although they had not produced a new text, the consultations on delimitation had proved once again that many delegations, including that of Suriname, were not satisfied with the wording of paragraph 1 of articles 74 and 83. Far from helping to achieve a consensus, the inclusion of the new formulation in the second revision would only increase controversy, as had been stated in the letter of 30 May 1980 addressed to the President and signed by 29 countries, including Suriname. It was to be hoped that, in drawing up the third revision of the negotiating text, the Collegium would find a way to solve that difficult problem.

20. As to the issues before the Third Committee, his delegation thought that the new legal framework for marine research, coastal State consent and international co-operation was in line with the progressive development of international law. But once again, there would still be room for minor amendments, in accor-

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

dance with rule 33 of the rules of procedure. His delegation reserved its position on other important matters, particularly the final clauses and the settlement of disputes, pending the final session of the Conference. It hoped that it would be possible to establish a comprehensive and carefully balanced convention on the law of the sea, in accordance with the Declaration of Principles adopted by the General Assembly in resolution 2749 (XXV).

21. Mr. PRANDLER (Hungary) said that his country's approach to the question of the new legal system of the seas was determined by the principles of mutual co-operation, non-discrimination and peaceful co-existence. His delegation thought that the new convention, although in several respects unfavourable to land-locked and geographically disadvantaged countries like Hungary, would nevertheless contribute to international peace and security. The ninth session had resumed its work in a somewhat unpromising atmosphere as a result of certain unilateral actions. However, thanks to the efforts of the various groups, and particularly the Group of 77, agreement had been reached on Part XI of the text and on the general provisions, the settlement of disputes and the final clauses (A/CONF.62/L.58, 59 and 60). Clearly, certain elements in the proposals did not command universal support but it was precisely that fact which gave them a compromise character. They should therefore be included in the third revision.

22. The issue of the decision-making procedure in the Council, which had been allotted to the First Committee, was one of the most controversial. His delegation had favoured a three-fourths majority because it considered that, apart from consensus, that was the procedure which most effectively took into account the interests of all. The opposition of some delegations to the principle of consensus was difficult to understand since the number of issues to be decided by that procedure was very limited and items which could raise difficulties would be decided by a two-thirds or three-fourths majority. Furthermore, article 161, paragraph 7 (*e*), provided for the establishment of a Conciliation Committee in cases where there were objections to a particular proposal. His delegation understood the concern of some small and medium-sized industrialized countries which wished to be represented on the Council, but it could not support proposals which would jeopardize the results achieved. Since the voting system was inseparable from the composition of the Council, any enlargement of the latter would upset the delicate balance on which article 161, paragraph 7, was based. With regard to the limitation of production, the Conference should find a balanced text which would treat the interests of land-based producers with consideration while at the same time protecting those of commodity importers such as Hungary. In addition, the wording of the anti-monopoly clause should be improved.

23. The texts proposed by the Third Committee (A/CONF.62/C.3/L.34 and Add.1 and 2) were satisfactory and his delegation could accept them, despite some reservations. The proposals relating to the general provisions, final clauses and settlement of disputes were acceptable, although it would have been preferable, in article 309, to have stipulated a three-fourths majority for the entry into force of amendments.

24. The provisions of Parts II to X of the second revision of the negotiating text were the outcome of lengthy efforts. There could therefore be no question of reconsidering the text of article 125, which constituted a compromise solution. If the convention was to be acceptable to the land-locked States, it was essential to maintain unchanged that provision on the right of access to and from the sea and freedom of transit. Similarly, there could be no question of limiting the right of innocent passage through the territorial sea, as laid down in articles 7 to 21, or of attempting to extend the jurisdiction of coastal States beyond the economic zone, which was the aim of some informal proposals concerning article 63. One coastal State had emphasized that it could not accept a convention under which the rights of the coastal States were impaired or diminished; likewise, the land-locked States and many other States could not accept a convention in which their rights were impaired or diminished.

25. The Drafting Committee was to be congratulated on its great efforts, although its task was far from complete. His delegation was confident that it would scrupulously respect rule 53 of the rules of procedure and would refrain from reopening substantive discussions.

26. Now that the negotiating text enjoyed wide support, the time would seem to have come for the United Nations Secretariat to make a rough estimate of the financial commitments envisaged for the States parties to the Convention, so as to give Governments an idea of their order of magnitude and to speed up acceptance of the final text. There were, of course, some outstanding issues, such as delimitation, the Preparatory Commission and participation in the Council, but Hungary was confident that a universally acceptable convention would be successfully worked out in the near future.

27. Mr. WILSON (Dominica) said that his delegation accepted the principle that the resources of the sea, as the common heritage of mankind, should be exploited for the benefit of all nations, whatever their geographical situation. That question was of particular importance to Dominica because it was exposed to devastation by cyclones, which were frequent in its part of the world. Since its agriculture was vulnerable, the resources of the sea and the sea-bed were of great importance to it.

28. Being an island, Dominica was particularly interested in the régime of islands. The provisions relating to the territorial sea and the exclusive economic zone took into account, in its view, the various interest groups concerned and were favourable to its economic future.

29. The delimitation of maritime boundaries should be based on geographical and not political factors. From the geographical standpoint, however, Dominica was disadvantaged. The Caribbean Sea, like some other seas in the world, was studded with islands in close proximity, each with independent administrations. The islets, bays and rocks interspersed among those islands came under the jurisdiction of those various administrations. It followed that the delimitation of maritime boundaries in the Caribbean posed delicate problems and his delegation held the view that agreements must be concluded among the administrations concerned to surmount those difficulties. Whatever the content of those agreements, however, they should not in any way prejudice Dominica's right in international law to determine its territorial waters and exclusive economic zone in accordance with the text of the convention. In that connexion, article 121, paragraph 3, which stated that "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf", was quite clear and acceptable to his delegation, which laid emphasis on the words "of their own" and interpreted the word "or" in the first line to mean "and". Any attempt to delete paragraph 3 from article 121 would serve only to complicate the already formidable problem of delimiting maritime boundaries in the Carribbean. Hence, the provision must be maintained. To give "rocks" a competence to establish an exclusive economic zone would create a disturbing precedent which could be based only on political factors.

30. In paragraph 1 of articles 74 and 83, it was difficult to interpret the meaning of "international law". In Dominica's view, the question of the delimitation of maritime areas between States could be settled only in accordance with the concept of equity. From that viewpoint, geographical factors were not the only considerations; account must also be taken of the needs and aspirations of the peoples of poor islands.

31. His delegation strongly supported the transitional provision in Part XVI relating to final clauses, but felt that in order to make the provision of paragraph 1 meaningful, paragraph 2 should be amended to enable the rights provided for in paragraph 1 to be exercised pending the settlement of a dispute.

32. His delegation supported the Romanian proposal relating to geographically disadvantaged States. It would study closely the third revision of the negotiating text and hoped that it would be permitted to make any appropriate reservations to the convention in order to safeguard the vital interests of the Commonwealth of Dominica.

33. KIM CHUNG (Viet Nam) congratulated the co-ordinators of working group 21 on successfully producing a text which on many more or less delicate questions allotted to the First Committee, such as the transfer of technology, the review conference and production policies, constituted a distinct improvement on the preceding text. His delegation particularly welcomed the inclusion in article 161, paragraph 1 (*d*), of potential producer States among developing States representing special interests. But among the clearly positive results, the most important was the solution found for the delicate problem of decision-making in the Council of the Authority on questions of substance through the adoption of a flexible procedure combining two-thirds and three-fourths majorities and consensus, according to the different categories of questions to be decided. A balanced compromise had thus been secured between the legitimate interests of the various groups of States.

34. Although the work of the First Committee had on the whole been positive, his delegation nevertheless had reservations on certain issues. It hoped that the anti-monopoly clause would be improved. Similarly, it would have preferred the financing of the first mine site worked by the Enterprise to be underwritten mainly by the contractors who would profit most from the exploitation of the international sea-bed. In a spirit of compromise, however, it would agree to the incorporation of the text of document A/CONF.62/C.1/L.28/Add.1 in the third revision.

35. With regard to the work of the Second Committee, his delegation was not satisfied with all the solutions which had been proposed. Nevertheless, in a spirit of conciliation and in order to avoid upsetting the complex balance which had been established after long and difficult negotiations, it thought that once again, the over-all results could be regarded as generally acceptable and constituting a basis for the third revision.

36. His delegation was convinced that the question of the delimitation of maritime areas could be settled only on the basis of the principle of equity, as enshrined in legal theory and practice. The consultations between the two opposing groups of 29 and 22, which had brought about a better understanding of their respective points of view, should pave the way for the drafting, at the next session, of a compromise formula acceptable to both groups. It was to be hoped that the third revision would contain an improved version of paragraph 1 of articles 74 and 83. Clarifying his delegation's views on the two key elements which were still in dispute, he said it agreed that there should be a reference to international law, on the clear understanding that such law was based on equity. With regard to the qualification of the circumstances or factors which must be taken into account in determining the boundary line, his delegation would prefer the adjective "relevant", but it could accept, in a spirit of compromise, the deletion of any qualifying word or phrase.

37. He wished to take the opportunity to reaffirm his Government's position, as defined in a statement dated 12 May 1977, which was to settle all problems relating to the various maritime areas and the continental shelf with the neighbouring countries concerned through negotiations conducted on the basis of mutual respect for independence and sovereignty, and in conformity with the principle of equity. The primary aim of that good-neighbour policy was to make the Oriental Sea which washed the Shores of Viet Nam and other South-East Asian countries a zone of peace, stability and co-operation.

38. Lastly, his delegation accepted, in a spirit of compromise, the inclusion in the third revision of all the final clauses and general provisions as formulated during informal plenary meetings. It wished the Collegium every success in its task of devising a text which would bring nearer the final objective desired by all: the early adoption of a universal convention on the law of the sea.

39. Mr SANZE (Burundi) said that the establishment of a new international régime of the sea would constitute a revolution of global proportions, both in the context of *jus gentium* and in the history of mankind. What was required was to establish legal machinery which would act as a barrier against the entrenchment of that iron law, the maximization of profits. However, sprinkled as it was with clauses likely to strengthen the already privileged position of the most affluent States, the draft convention was likely to confirm certain others in the role of eternal outsiders. Thus, the provisions relating to the exclusive economic zone and the continental shelf favoured the coastal States, some of which had abundant technological resources and were thus assured of exercising absolute mastery over the oceans.

40. Against the formidable competition which future miners would undoubtedly offer land-based producers, protection should be provided for countries which, like Burundi, were economically and commercially disadvantaged by being land-locked, just as others were by being islands, with regard to the transit and marketing of their goods. In his view, therefore, the legal rules and procedures applicable to the transfer of technology, the approval of plans of work submitted by applicants and the selection of applicants for production authorizations should be further improved. The same was true of the policies relating to activities in the Area and in particular production policies. The amendments proposed by six African States, including Burundi, were intended to remedy the shortcomings which had been detected. Article 171 in particular, in its suggested new form, would create a legal instrument capable of providing land-based producers with the protection they required.

41. Since the sea-bed was the common heritage of mankind, it would be illogical if the primary aim of the new regulations, which were intended to be in the interests of all, was not to protect the countries which might be harmed by the exploitation of that area. There would be a great temptation, once the exploitation of the resources of the sea-bed became profitable, to take refuge behind public international law in order to secure release from commitments made under a treaty which recognized the *de facto* and *de jure* equality of all. Maximum guarantees must therefore be provided for the weakest members of the international community.

42. Care must be taken not to institutionalize existing disparities by relegating the principle of the equality of States to the realm of theory. Access to the benefits of the common heritage of mankind represented by the immense resources of the seas and oceans was a sacrosanct right which no one was authorized to impugn.

43. Mr YATIM (Malaysia) welcomed the progress which had been achieved towards the early adoption of a convention on the law of the sea. The results of the negotiations in the First Committee on hard-core issues which at one time had seemed insoluble were evidence of that progress. His delegation welcomed the new amendments relating to the transfer of technology, the anti-monopoly clause, the review conference, the qualifications of applicants and the amendments proposed concerning the system of exploration and exploitation which would improve the text of the second revision.

44. His delegation considered it imperative to find an equitable formula for controlling sea-bed mining so as to protect present and potential land-based producers of nickel, cobalt, manganese and copper. As a potential producer of copper, Malaysia associated itself with the countries which had expressed the view that the floor of 3 per cent should be lowered: such a decision would have the direct effect of protecting the economies of land-based producers.

45. With regard to the financial arrangements and the statute of the Enterprise, his delegation welcomed the proposed amendments to annex IV, article 11, paragraphs 3 (*a*), (*b*), (*c*), (*d*), (*f*), (*g*) and (*h*), relating to the financing of the Enterprise. It was also pleased to note the substantial progress which had been made in overcoming the problems of the composition of the Council, decision-making procedure in the Council and the outstanding issues relating to article 162. The new wording of article 161, paragraphs 1 (*d*) and 7, seemed to be an improvement on the previous text. The same was true of the proposed amendments to article 162, paragraph 2 (*j*).

46. The provisions of articles 74 and 83 in the second revision

on delimitation criteria constituted an acceptable compromise. In that connexion, he wished to inform the Conference that both Malaysia and Thailand had, in a spirit of mutual understanding and co-operation, established a joint authority to administer, for a period of 50 years, a disputed area of the continental shelf in the Gulf of Thailand pending the delimitation of the continental shelf between the two countries.

47. His delegation expressed appreciation of the untiring efforts of the Chairman of the Third Committee to resolve the problems relating to marine scientific research and, in a spirit of compromise, it was prepared to accept the changes which the Chairman had proposed (see A/CONF.62/C.3/L.34 and Add.1 and 2).

48. While expressing support for the President's preliminary report on the final clauses and general provisions, his delegation wished to reserve its final position on article 307. In addition, it considered that the articles on amendments to the convention and its annexes were not exhaustive and therefore required further consideration.

49. The work of the informal plenary meetings on dispute settlement had also produced results which represented an improvement on the previous text. In that connexion, his delegation reiterated its support for compulsory conciliation procedures as a method of settling disputes.

50. His delegation expressed appreciation for the work of the Drafting Committee and the language groups, but it had noted with some concern that, at the current stage of the Conference, delegations were still proposing changes which were described as drafting changes but were in fact substantive. It therefore urged all delegations not to introduce such changes, which would merely have the effect of reopening negotiations on points which were regarded as settled. It also urged the Drafting Committee to address itself to clarifying terms which were still unclear in the existing text. His delegation was prepared to co-operate with all delegations in the search for consensus on all outstanding substantive issues.

51. Mr. YOLGA (Turkey) noted with satisfaction that the Conference, in an informal plenary meeting, had favourably received several texts relating to provisions and principles of a general nature intended for incorporation in the convention (see A/CONF.62/L.58). His delegation wished that its proposal appearing in document GP/7 had had a similar reception, but it hoped that the general principles enunciated therein would assist in the implementation and interpretation of the Convention. Among the proposals approved in the informal plenary meeting, the proposal relating to archaeological and historical objects was the least realistic, not in respect of the underlying principle, but because it was associated with article 33 relating to the contiguous zone and not with the provisions relating to the continental shelf.

52. One of the outstanding results of the Conference had been to agree on an outer limit for the territorial sea. Nevertheless, in regions of semi-enclosed seas where the present breadth was less than 12 miles, States should not exercise unilaterally the right given them under article 3 without taking into account the legitimate interests of neighbouring countries. In that connexion, the Conference still had before it the informal Turkish proposal C.2/Informal Meeting/23. Similar comments applied to article 33 relating to the establishment of a contiguous zone which, in spite of its traditional place in international law, might be regarded as outmoded with the advent of the concept of the exclusive economic zone. Furthermore, the breadth of the zone, which had been extended to 24 miles, might give rise to difficulties in certain cases.

53. His delegation had made known its views on the second revision of paragraph 1 of articles 74 and 83 in a letter from the representative of Turkey and also in the collective letter from the group of 29. Since the revision had been made in breach of the rules of the Conference, Turkey considered that the paragraph concerned was null and void, and requested that the original text should be reinstated in the third revision. With regard to the text of paragraph 1 which had been proposed by the Chairman of negotiating group 7, and incorporated in the second revision, the fact that reference was made to international law did not in itself give rise to any difficulty. The group of 29 had, on the contrary, always maintained that the Conference should not innovate in that field, but should codify the law, in view of the fact that the rules governing delimitation were already clearly defined. In accordance with the 1969 ruling of the International Court of Justice,[2] delimitation must be effected by agreement in conformity with equitable principles and having regard to all the relevant factors; the equidistance line did not by any means have the status of a rule of law and was only one method among many. Those rules had been faithfully reproduced in document NG7/10/Rev.2, which his delegation had co-sponsored, and had been included in the original informal composite negotiating text.[3] His delegation's basic objection to the proposal by the Chairman of negotiating group 7 concerned the way in which reference was made to international law and the confusion which inevitably resulted therefrom. Another unfortunate innovation was the use of terminology unknown in international law instead of the term "all relevant circumstances". The group of 29 had sought to embark on negotiations to find a reasonable solution to that problem, which was among the major difficulties confronting the Conference; his delegation was not sure whether the same will had existed within the other group.

54. On the question of dispute settlement, document SD/3 met the twofold requirement of reorganizing Part XV and drafting a section devoted to compulsory conciliation procedure. His delegation welcomed the results of the discussions on the subject reported in document A/CONF.62/L.59. It nevertheless objected to the idea that there was a link between article 298, paragraph 1 (*a*), and the articles on delimitation: they constituted two quite different categories of provisions, one being procedural and the other relating to substantive norms of international law. Paragraph 1 (*a*) would benefit from being recast in the light of the section on compulsory conciliation.

55. With regard to the régime of islands, his delegation was one of the sponsors of the informal proposal contained in document C.2/Informal Meeting/21, which was closely linked with the issue of delimitation. The effect of that proposal would not be to cast doubt in any way on the rights of islands; its only aim was, in cases where islands might have a negative influence on delimitation, to codify a principle which was already well established in international law. Since the very first conference on the law of the sea, islands had always been regarded as heading the list of elements which created special circumstances, both in legal theory and practice and in State practice. One of the gaps in the informal composite negotiating text, as in the previous system established in 1958, was precisely related to the fact that article 121 was silent on that important aspect of the régime of islands. A useful contribution would be made to codification by establishing the necessary link between the article concerned and articles 15, 74 and 83.

56. Among the draft texts considered by the Second Committee, his delegation had supported the amendment submitted by Argentina and other countries to article 21 (C.2/Informal Meeting/58), by Yugoslavia to article 36 (C.2/Informal Meeting/2/Rev.2), by Argentina to article 63 (C.2/Informal Meeting/54/Rev.1) and by Romania to article 70 (C.2/Informal Meeting/51). Those amendments should be endorsed by the Conference.

57. On the whole, his delegation shared the views expressed by the Group of 77 on the work of the First Committee. It also endorsed the comments made by the Swiss representative about the representation of medium-sized industrialized countries on the Council.

58. Since the Third Committee had concluded its work before the end of the session, it only remained for his delegation to pay a well-deserved tribute to that Committee and its Chairman.

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[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII, (United Nations publication, Sales No.E.78.V.4).

59. Mr. LUPINACCI (Uruguay) said that the revision of the articles on Part XI and annexes III and IV which had been undertaken by the co-ordinators of the group of 21 represented an immense effort to achieve conciliation. His delegation was not satisfied with all the new provisions, particularly the voting procedure envisaged for the Council of the Authority because of the disguised veto involved in the consensus formula. But in view of the difficulties which had had to be overcome, it considered that those formulas, which reflected a delicate balance, offered the best prospect of agreement and should be incorporated in the third revision. In any event, it wished to make it clear, as a member of the group of Latin American States, that it did not regard the provisions of draft article 151 on production policies in document A/CONF.62/C.1/L.28/Add.1 as constituting one of the questions on which the Council would take decisions in accordance with draft article 162, paragraph 2 (*l*). Furthermore, the wording of the draft article should be recast since it differed unnecessarily from the current text of the second revision. Article 155, paragraph 2, relating to the principle of the common heritage of mankind, should refer to the maintenance not of that principle, but of the effective implementation of that principle, which constituted a peremptory norm of international law, in accordance with the idea embodied in the new paragraph 6 of article 305 (A/CONF.62/L.58). His delegation supported the incorporation of that paragraph in the third revision. With regard to the negotiations on the questions allotted to the First Committee, it regretted that certain States had enacted, or were in the process of enacting, unilateral legislation on the exploration and exploitation of resources in the international Area, in spite of the current negotiations and in violation of the common heritage principle.

60. With regard to the work of the Second Committee, his delegation regretted that the Committee had not considered certain issues for which, in the opinion of many delegations, acceptable solutions had not yet been found. Certain proposals which should be given consideration had been submitted, in particular that contained in document C.2/Informal Meeting/58, regarding the innocent passage of warships through the territorial sea, which his delegation supported, and the proposal contained in document C.2/Informal Meeting/54/Rev.1, which it had co-sponsored and which was based on a proposal that had first been made by Argentina and had obtained considerable support during the first part of the ninth session. The latter proposal, whose purpose was solely to ensure the protection of certain living resources, had been amended during negotiations between the delegations concerned, which had endeavoured to make the texts of articles 63 and 117 compatible. The amendments made to article 63 following those negotiations offered a better prospect of consensus and should be included in the third revision. On the other hand, certain provisions of the second revision and certain omissions from that text, in particular in Parts V and VII, caused his delegation some concern. He was not referring to key issues which had already been negotiated, but to certain aspects of those issues which had not been negotiated. Some articles were drafted in an ambiguous manner or were inconsistent with the articles relating to key issues, and that upset the desired balance. Thus, his delegation considered that the exclusive right of the coastal State in the exclusive economic zone to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures did not admit of any exception or limitation with regard to types of installations or structures. The wording of article 60, paragraph 1, should therefore be simplified. As that involved more than a mere drafting amendment, the Second Committee should be asked to consider the matter. If the provision remained unchanged, his delegation wished to make it clear that it considered the reference in subparagraph (*b*) to "other economic purposes" superfluous, since it was quite obvious that all possible economic purposes were covered in article 56. That particular amendment could in fact be left to the Drafting Committee, but it was clear that in other cases, such as the recasting of paragraph 1, substantive changes were involved.

61. He also wished to draw attention to certain omissions: first, there was no provision on responsibility for damage caused in the exclusive economic zone by warships or other government ships operated for non-commercial purposes as a result of non-observance of the laws and regulations adopted by the coastal State in conformity with the convention; likewise, there was no provision establishing the duty to inform the coastal State of any of the actions mentioned in articles 105, 108, 109, 110 and 111 if they were conducted in that State's exclusive economic zone. The examination of all those points in informal negotiations, far from undermining the package deal, would facilitate consensus and make it unnecessary for delegations to consider submitting formal amendments.

62. His delegation welcomed the work accomplished by the Third Committee in adjusting texts which involved the solution of technical problems.

63. With regard to scientific research, he repeated that his delegation had difficulties with article 246, paragraph 6, and that it would be easier to reach consensus if the word "specific" was replaced by a term which would remove doubts and reservations. Furthermore, at the end of paragraph 6, in the Spanish text, the words "*operaciones en ellas realizadas*" should be replaced by the words "*aquellas operaciones*". Lastly, his delegation did not interpret article 246 as implying any direct or indirect limitation of the sovereign rights of the coastal State over its continental shelf, as recognized by customary and conventional law and in article 77 of the second revision.

64. With regard to the final clauses and general provisions, the new texts which had emerged from the negotiations conducted in informal plenary meetings were in principle acceptable to his delegation and should be included in the third revision. Nevertheless, Uruguay had a serious objection to draft article 305. It was stated in paragraph 1 of that article that, as between States parties, the convention prevailed over the Geneva Conventions of 1958. However, the régime established by the new convention would have different bases from those of the Geneva Conventions and would reflect new legal concepts. Customary law still held good, but one legal régime, conceived as an integral whole, replaced the other régime or was substituted for it in the eyes of the States parties.

65. With regard to reservations, his delegation supported the solution proposed in document FC/21/Rev.1/Add.1 (art. 303) provided that a drafting amendment was made deleting the unnecessary reference to exceptions. In any case, the results achieved in that area were for the moment provisional.

66. Although the Conference had now surmounted the major difficulties, it must still address itself to finding the necessary final compromise formulas and polishing up the text before the final draft convention was completed.

67. Mr. ORANTES-LUNA (Guatemala) said that, in endeavouring to reach a generally acceptable package deal, it was important not to overlook points which were of vital interest to certain countries. If the compromise formulas arising out of the negotiations were the result of concessions made by delegations which held opposing positions, it did not follow that the negotiating efforts had succeeded or that the text, and consequently the prospects of consensus, could not be further improved. His delegation was convinced that the joint proposals and unity of action of the Group of 77 had made a considerable contribution to the success of the negotiations.

68. Referring to specific points, he said, firstly, that the passage of warships through the territorial sea must be subject to the prior authorization of the State concerned, so as to comply with the national legislation of many countries, to legalize a common practice and to avoid conflicts. Secondly, as a sovereign State, Guatemala was required to do everything possible to encourage the conservation and management of the biomass in its exclusive economic zone, outside that zone and in what at present constituted the adjacent sea. Measures for the conservation of migratory species must be adopted jointly by the coastal State and other States whose nationals caught such species in the contiguous zones, and purely mercantile interests, which would disturb the biological balance in the biomass, must never predominate.

Thirdly, the fishery resources of the coasts and contiguous zones must be preserved, and should not be managed in a manner which failed to take account of the conservation policies of coastal States; it was therefore essential to provide for machinery to control the aggressive exploitation to which fishery resources were at present being subjected. Fourthly, Guatemala had for some time been producing nickel in order to diversify its economy, and part of its development now relied on such production. A number of delegations had already expressed doubts as to the future of the land-based producers when deep-sea mining became a reality. His delegation therefore requested that the Conference should give due attention to that matter and provide for a production control formula giving adequate protection to land-based developing-country producers. Fifthly, his delegation in no way opposed the idea that peoples which had not acceded to independence or whose territory was occupied by a foreign Power should fully enjoy the economic benefits that would accrue to them under the Convention: the Conference should therefore devise machinery which would enable international agencies such as the United Nations Development Programme to invest the funds deriving from such benefits in order to promote development of those peoples. Sixthly, his delegation had demonstrated goodwill during the negotiations in the hope that a wording satisfactory to all parties and capable of commanding a consensus would be found for article 300. Guatemala welcomed the progress made at the second part of the ninth session.

69. Mr. FERRER (Panama) expressed satisfaction at the substantial progress made at the second part of the ninth session, and the hope that the long and arduous negotiations carried out so far would lead to the adoption, at the next session, of a law of the sea capable of protecting the interests of all States. He welcomed the fact that the Conference had accepted the draft article on *jus cogens*, submitted by the Chilean delegation, and supported the participation of liberation movements recognized by the United Nations or by international regional organizations in the benefits derived from the convention.

70. His delegation maintained its position on the innocent passage of warships through the territorial waters of coastal States, that is, on the need to obtain express permission for such passage from the State exercising sovereignty over the waters in question. It welcomed the agreement reached on the Greek proposal concerning the protection of archaeological or historical objects, on the proposals for the use of the sea for peaceful purposes and on the protection of marine mammals, and other proposals which had received substantial support.

71. On the other hand, it could not support the intentions of States which, by unilateral action, sought to withdraw certain sea or land areas from the régime of the Convention or from the sovereign jurisdiction of other States. It therefore protested vigorously against the legislation enacted by the United States Congress, approved by President Carter on 11 August 1980, and designed to empower the United States to establish demarcation lines delimiting the high seas and United States internal waters, which, under section 2 (*c*) of the act in question, encompassed the waterway and adjacent lands known until 1 October 1979 as the "Panama Canal Zone". That provision was contrary to the principle of sovereignty and jurisdiction exercised by the Republic of Panama over the waterway zone, which had never ceased to be an integral part of national Panamanian territory. It therefore violated the Panama Canal Treaty, which had been in force since 1 October 1979 and under which, what had been known as the "Canal Zone" and the administrative jurisdiction exercised over that zone by the United States had been explicitly terminated. The act was therefore simply creating grounds for conflict, just as the act on deep-sea exploration and mining had done. His delegation, therefore, could not but strongly condemn any form of unilateral legislation which endangered the balance of the current negotiations and cast doubts on the desire for negotiation.

The meeting rose at 6.05 p.m.

141st Meeting

Friday, 29 August 1980, at 3.30 p.m.

President: MR. H. S. AMERASINGHE

Organization of work of the tenth session and of the intersessional meeting of the Drafting Committee

1. The PRESIDENT said that although he was already aware of the preferences of the various groups of countries concerning the place, date and duration of the following session of the Conference, he considered it necessary, in order to avoid any possible misunderstanding, to call on the Special Representative of the Secretary-General to give an objective report on the situation which implied no preference on the part of the Secretariat. He would then call on the Chairman of the Group of 77, the Chairman of the group of Eastern European States, the Chairman of the group of Western European and other States, the representative of the United States, and lastly, if they so desired, the Chairmen of the group of African, Asian and Latin American States, which constituted the Group of 77.

It was so decided.

2. Mr. ZULETA (Special Representative of the Secretary-General) said specific instructions he had received from New York indicated that, if the Conference decided to hold its following session in New York, the Committee on Conferences of the General Assembly might have serious difficulty in providing it with the necessary services, since the Assembly could decide, as it was entitled to do, to use the available services—conference rooms and translation, reproduction and interpretation services—for other negotiations, such as those which were planned as a follow-up to the current eleventh special session of the General Assembly. Those facts implied no preference on the part of the Secretariat, which simply abided by the decision of the various Governments, the sole entities competent to rule on the matter.

3. The PRESIDENT, noting that the choice to be made rested with the Governments which were represented both at the Conference on the Law of the Sea and in the General Assembly, urged delegations to request their Governments to give primary consideration to ensuring the successful conclusion of the Conference.

4. Mr. WAPENYI (Uganda), speaking on behalf of the Group of 77, recommended that the Drafting Committee should meet for a period of six weeks and that the Conference itself should meet one week after the Drafting Committee had completed its work, also for six weeks. For practical reasons, since some of its members might not have an embassy or mission in other cities, including Geneva, the Group of 77 would like the following session of the Conference to be held in New York. The members of the Group had decided to get in touch with their permanent representatives in New York to ask them to ensure that priority was given to the Conference on the Law of the Sea.

5. Mr. SPÁČIL (Czechoslovakia), speaking on behalf of the group of Eastern European States, said that the draft programme of work submitted by the President in document A/CONF.62/