

# **Third United Nations Conference on the Law of the Sea**

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## **Statement by the delegation of Honduras dated 25 August 1980**

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)*

the Enterprise is viable, moreover, it must be given the required financial resources. The primary source of funding should be the system of charges and fees for the activities of States and individuals that have concluded contracts on the subject with the Authority, first, because of the very nature of the compromise on which the parallel system is based, as is demonstrated by the history of the negotiations: access of the industrialized States to the Area in return for making the Enterprise viable, and secondly, reasons of elementary justice support that arrangement.

20. Under the parallel system, the *quid pro quo* for the viability of the Enterprise is the right of access of States and individuals to the Area within a general framework of legal security. In this connexion my delegation advocates that there should be embodied in the convention a substantive and procedural specification of the conditions governing access to the Area and the conduct of activities in it: well-formulated legal rules to ensure the conclusion and execution of contracts, once the applicants have complied with the stipulated requirements, and jurisdictional means of dispute settlement to ensure compliance with those rules.

21. We consider, moreover, that the wording suggested by the Chairman and co-ordinators of the group of 21 at the present session (A/CONF.62/C.1/L.28 and Add.1 and 2), still fails to take account of the interests of intermediate industrialized countries in the matter of the composition of the Council of the Authority. Since heavy financial burdens are going to be imposed on these countries, the equitable course is to give them a reasonable opportunity to participate in the management of the Authority. Paragraph 1 of article 161 therefore needs to be revised, and this can be done without affecting the delicate balance achieved in paragraph 7 of that article on the method of taking decisions. Negotiations to this end should be held at the next session of the Conference, and my delegation accordingly proposes that in the third revision a foot-note should be added to paragraph 1 of article 161 stating that the matter of the composition of the Council is to be the subject of later negotiations.

22. My delegation also wishes to place on record its concern with regard to the provisions on the financing of the Enterprise.

23. With regard to the final clauses of the convention, my delegation wishes to refer in particular to the subjects of reservations and relation to other conventions and international agreements.

24. Some delegations have maintained that the convention should prohibit all reservations. The grounds for that view are that the ideas of consensus and a package deal are incompatible with reservations. My delegation, however, holds that that view is valid only to the extent that genuine, absolute consensus, satisfactory to all delegations, is achieved on all issues. Should this ideal be unattainable, some reservations should be admissible. Such an option would undoubtedly affect the integrity of the convention, but it is nevertheless true that it would be conducive to its universality. The best course would therefore be for the Conference to maintain with regard to reservations a satisfactory balance between the guiding principles of integrity and universality, both of which are mentioned in the "Gentleman's Agreement" incorporated in the rules of procedure as aims to be achieved.

25. With regard to the relationship of the future convention to other conventions and international agreements, particularly the 1958 Geneva conventions, my delegation has already placed on record its view that a clause derogating those conventions does not appear to be a satisfactory course. The Geneva conventions represent a significant effort to codify the customary law of the sea and, as stated in the draft preamble, such customary law would continue to govern matters not regulated by the new convention. Again, the drafting of the new law of the sea takes such customary law as its point of departure. If the Geneva conventions remain in force, there would be no adverse effect on States which did not participate in drafting them and are not parties to them since, as is laid down in article 30 of the 1969 Vienna Convention on the law of treaties,<sup>22</sup> the Geneva conventions would be applicable solely between States Parties to them and to the extent that they were compatible with the provisions of the new convention.

<sup>22</sup> See *Official Records of the United Nations Conference on the Law of the Sea, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

## DOCUMENT A/CONF.62/WS/13

### Statement by the delegation of Honduras dated 25 August 1980

[Original: Spanish]  
[3 October 1980]

#### FIRST COMMITTEE

1. The delegation of Honduras has studied carefully the texts submitted for its consideration both by you, in your capacity as President of the informal plenary Conference on Final Clauses and Settlement of Disputes, and by the Chairmen and Co-ordinators of the First, Second and Third Committees and which, in accordance with the procedure set forth in document A/CONF.62/62,<sup>23</sup> could be incorporated in a third revision of the informal composite negotiating text by the Collegium of Chairmen, taking this debate into account.

2. The delegation of Honduras considers that, generally speaking, the resumed ninth session has maintained the momentum of the negotiations on outstanding issues initiated in 1979 and that we are very probably closer than ever before to the conclusion of the negotiations and the transition to a final stage that will make it possible to adopt a broad, comprehensive and generally acceptable convention in 1981. That is the goal we have set ourselves, and we should not affect its attainment by adopting inflexible positions or taking unilateral action.

3. Honduras considers that the texts resulting from the negotiations relating to First Committee items (A/CONF.62/C.1/L.28 and Add.1) could be incorporated as a package in the third revision. The negotiation of these texts was arduous and difficult, but the results achieved deserve our support, although we still have some specific doubts about certain articles or the over-all relationship between some of them.

4. Honduras is gratified to note that there is no longer any resistance to article 140 and supports the new compromise texts of article 140 and article 160, paragraph 2 (f), concerning the carrying out of activities in the Area for the benefit of mankind and the equitable sharing of the benefits derived therefrom. The delegation of Honduras supports the texts on production policies, but still has misgivings about article 150, subparagraph (h), which it would prefer to see deleted. With regard to article 151, paragraph 4, it believes that further studies are required on the system of compensation.

5. The review conference system provided for in article 155 deserves our support, provided that the equilibrium of concessions which it implies is maintained and that it is not altered or weakened further.

<sup>23</sup> *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X.

6. The system for the adoption of decisions by the Council incorporated in article 162 is not completely satisfactory but it reflects a notable effort to reach a compromise. The definition of the consensus is not compatible with others considered by the Conference, and a different definition was even read out by you, Mr. President, this morning at the 134th plenary meeting.

7. The formula for the composition of the Council includes the new category of "potential producers", which we continue to support. Consequently, consideration should henceforth be given to devising criteria and formulas for the internal sharing of positions within regional groups so as to ensure genuine and effective participation by all States in the operation of the limited membership organ of the Authority, in accordance with the principles of equitable geographical distribution, the benefit of all mankind, relatively lower level of development and other relevant criteria.

8. The interests of the "semi-industrialized countries" should also be taken into account, in view of their important future contribution to the Authority.

9. The formulas for the financing of the Enterprise bring us closer to a consensus, but in the context of our future deliberations on the preparatory commission we should seek to devise mechanisms which will ensure that the Enterprise will become operational in the near future.

10. With regard to the transfer of technology, we support the strengthening of the system provided for in article 5 of annex III, and, in particular, in paragraph 3 (e) and new paragraph 7.

#### SECOND COMMITTEE

11. Concerning the discussion of general issues relating to the law of the sea in the Second Committee, we wish to observe first of all that there are still some aspects of the matter which are not properly covered by the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5), and that a further opportunity should be provided for new consultations with a view to improving the chances of reaching a consensus.

12. To that end, it would be advisable to review the rules relating to the conditions for the passage of warships through the territorial sea and its internal waters when they have been delimited by the straight baseline system, since this involves a security requirement of the coastal States whose fulfilment amply justifies the inclusion of a rule stating that the prior authorization of those States is necessary for the passage of warships.

13. The negotiating text contains a legal régime of the exclusive economic zone which implies an equilibrium of rights, jurisdictions and freedoms that cannot and should not be modified. Honduras, which incorporated the basic principles of that régime in Decree-Law No. 25 of 16 January 1951, has developed the régime further in a Law on the Exploitation of the Natural Resources of the Sea of 13 June 1980, which incorporates that equilibrium in accordance with the current practice of States and the deliberations of this Conference.

#### THIRD COMMITTEE

14. In the Third Committee, notable efforts were once again made to clarify the texts drafted at earlier meetings, in line with recommendations submitted by the Drafting Committee and by various delegations during the debate on the subject. We support the results which are set forth in document A/CONF.62/C.3/L.34 and Add.1 and 2.

15. We feel, however, that an effort should be made to render more specific the obligation to co-operate with regard to the publication and dissemination of the information and knowledge resulting from marine scientific research, in particular for the

benefit of the developing countries. We also consider it very important to emphasize the provisions of articles 275 and 276 concerning national and regional marine scientific and technological research centres, a subject to which the Government of Honduras has decided to assign the highest priority at the La Ceiba Centre, since it believes that such centres are the appropriate channel for a smooth and efficient transfer of scientific and technological assistance from developed States and competent international organizations to developing countries.

#### SETTLEMENT OF DISPUTES

16. Our delegation has played an active part in the negotiations concerning proposals relating to the settlement of disputes, and we can support the suggestions set forth in document A/CONF.62/L.59, although we wish to observe that many of the proposals in paragraph 9 were perhaps not sufficiently discussed. Further thought should be given in particular to the proposal contained in subparagraph (a) to the effect that the annexes should have the same status as the Convention itself. Further thought should likewise be given to the possibility of incorporating in the body of the Convention the provisions relating to "obligatory submission to conciliation" as part of the final reordering of the texts before they are submitted for approval.

#### FINAL CLAUSES AND GENERAL PROVISIONS

17. Honduras supports the results obtained with regard to the final clauses and general provisions and is particularly satisfied with the provision which makes 60 ratifications necessary for the entry into force of the convention, since it believes it would be desirable for the convention to enter into force in the near future.

18. We still have reservations regarding article 305 with respect to the incomplete reference to the relationship between this convention and the Geneva conventions of 1958 over which the new convention should take precedence in all cases.

19. Similarly, we still have reservations concerning paragraph 6 of article 305, which we understand as being simply a provision which supplements other rules but does not replace them. We consider this interpretation necessary because of the origin of this proposal, as explained in document A/CONF.62/L.58. Honduras, like many other countries, supported document GP/9 of 5 August 1980 and we are also prepared to accept, as a compromise formula, the initial proposal of the President concerning the peremptory character of the principle of the common heritage of mankind. We are still not convinced that new paragraph 6 constitutes an appropriate resolution of this very delicate issue and we would prefer the matter to be examined again in due course.

20. Concerning the other general provisions, we expressly support the three articles proposed in paragraph 4 of document A/CONF.62/L.58 (dealing with good faith and abuse of rights, peaceful uses of the seas, and disclosure of information) on the understanding that they are mentioned in the last sentence of the paragraph as part of the negotiated package.

21. We also expressly support the new provision on archeological and historical objects.

22. Honduras considers that the international custom according to which the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, together with the resources thereof, are the common heritage of mankind, has crystallized and constitutes an indivisible whole, with supplementary principles such as that relating to the international machinery, and regards as contrary to the peremptory norms of modern international law the idea that the Area and its resources could be appropriated by one State or a limited number of States.