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54th meeting of the First Committee

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minerals from the Area. He was not sure whether that issue should be discussed at formal meetings of the Committee or in some other way of the Chairman's choosing.

57. The CHAIRMAN said that it was his feeling that he should have consultations with other delegations before bringing the matter before the Committee. If he heard no objections, he would undertake consultations with a view to finding out if there was a basis for consensus.

58. Mr. DORON (Israel) said that the matter of the Prepara-

tory Commission had so far been discussed only in the working group of 21. His delegation, like others, would like to express its views on the subject in the First Committee when possible.

59. The CHAIRMAN said that delegations would have such an opportunity when the working group of 21 submitted its report to the Committee.

The meeting rose at 1.15 p.m.

54th meeting

Thursday, 27 August 1981, at 4.05 p.m.

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

Report by the Chairman of the First Committee

1. The CHAIRMAN said that, as he had done at earlier sessions of the Conference, he wished now to report to the First Committee before he presented to the plenary his appraisal of work done during the resumed tenth session on matters with the Committee's mandate.¹

2. In the first place, the question of the Preparatory Commission had been considered further by the working group of 21. The meetings had been conducted jointly by the President of the Conference and the Chairman of the First Committee. The group had used, as a basis, the draft resolution contained in annex II to document A/CONF.62/L.55.² Upon completion of a first reading of the text of the draft resolution, the co-Chairmen had prepared a draft with a view to reflecting suggestions for improvements made during the negotiating process (WG.21/Informal Paper 15). The co-ordinator of the Group of 77 had also submitted informal suggestions contained in WG.21/Informal Paper 16. Following the completion of a second reading, the President of the Conference and he himself had prepared a further draft text (WG.21/Informal Paper 17) which reflected areas of agreement and those of possible compromise.

3. As could readily be seen, the working group of 21 had made progress in its work and substantial agreement had been reached on many basic issues relating to the establishment of the preparatory commission for the Authority and for the Law of the Sea Tribunal. The following issues, however, remained unresolved: membership, how decisions should be made on substantive issues, financing and termination. They should be dealt with in a package; compromise was needed from all sides. He was confident that those issues would be resolved at the final decision-making session in 1982.

4. Secondly, on the subject of production policy, he said that though there had been no formal negotiations on the matter, he had encouraged intensive and extensive discussions bilaterally, multilaterally and in a general framework. One conclusion that had emerged from the consultations was that no single measure might be adequate to resolve the matter and that there might be a need for a combination of measures for that purpose.

5. He ventured to project some ideas because of his belief that the current stalemate called for some fresh look at the central problem. He was convinced that the ideas he was men-

tioning addressed the issue and consequently were worth exploring. He would urge delegations to give serious thought to them during the intersessional period, and try to work out details. He stressed that nothing that he said should be construed, in any way, as undermining the basic principles or the substance of the text of Part XI. He thought that the introduction of comparatively minor changes could trigger new elements of agreement, and thus enhance the prospects of broader consensus.

6. It was possible that a solution to the problem of production policy lay in some economic scheme for which the Conference had neither the time nor facilities to devise. As a first measure, provision had been made in article 151, paragraph 4, for a machinery of investigation into the matter and that, one might confidently expect, would provide a solution. However, the experts admitted that time was an important factor and that States which were likely to be adversely affected would like to see such an investigation or study already under way before the full impact of sea-bed mining affected their industries. That would suggest that the preparatory commission could be involved in such a study. It was also reasonable that the States affected would wish to be closely associated in both drafting the terms of such an investigation and in the composition of the study group.

7. It would appear that since the problem was one which, through market disruptions, might affect not only land-based producers but also sea-bed miners and consumers of the metals, ways and means should be explored of reaching a mutual accommodation among producers and consumers. Article 151, paragraph 1, provided that the Authority could take the necessary measures with regard to any resultant arrangement or agreement. Again, keeping in view the time factor, the Conference might wish to provide that the preparatory commission be involved in studying possibilities in that regard and prepare recommendations for the Authority.

8. Thirdly, with regard to unfair economic practices, he said that it was generally recognized in the negotiating effort that the exploitation of the resources of the sea-bed, which were the common heritage of mankind, should be based on fair economic practices. In order to ensure that the common understanding was adhered to, some delegations, notably that of Australia, had made a proposal to the effect that States Parties, in the production, processing, transport and marketing of minerals and commodities derived from the resources of the Area, should avoid economic practices which caused, or threatened to cause, material injury to the interests of another State party. He had encouraged serious consultations on that matter, co-ordinated by the Chairman of the Australian delegation, who would inform the Committee about the details of those consultations later.

¹The full text of the Chairman's report was circulated under the symbol A/CONF.62/C.1/L.29.

²*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

9. Fourthly, with regard to preparatory investment protection, he observed that the outstanding issues outlined in document A/CONF.62/BUR.13/Rev.1 had included a proposal by the industrialized countries for protection of the investments engaged by consortia before the coming into force of the convention of the law of the sea. It would be recalled that the United States delegation had made some concrete proposals on that subject, but had withdrawn them during the first half of the tenth session. He had requested the industrialized countries to take steps to bring into a recognizable focus their concerns and preoccupations in that field. In spite of his insistence, he was unable to report that any discussion on that subject had taken place during the resumed session. He was informed that an initiative had been taken by one delegation but that it had been impossible to obtain the support of the others for any concrete proposals. He would strongly appeal to the industrialized countries to take all necessary steps to ensure that that matter was fruitfully discussed at the next session, if indeed it was still of interest to them.

10. Fifthly, he had previously drawn attention to the problem posed by certain less industrialized developed countries with regard to representation in the Council. He had requested the Chairman of the delegation of Sri Lanka to co-ordinate consultations on that subject, but regretted to say that the stalemate remained unresolved. He sincerely hoped that consultations would intensify between the present stage and the time when the convention was finally adopted.

11. Lastly, he had drawn attention to the effects of the decision of the new United States Government to review the draft convention, and to refrain from active participation in the work of the First Committee until such review was completed. The United States had been given opportunities in informal plenary meetings of the Conference to outline the areas of concern. He was informed that it had also had an opportunity during the session to meet with delegations and exchange views on those concerns. He sincerely hoped that the United States would return to the final and decision-making session prepared to participate in the final effort to ensure that history was given the greatest document that attempted to spell out conditions of peace and security in ocean space—a document which attempted to ensure that the common heritage of mankind was indeed used for the benefit of all mankind.

12. Mr. BRENNAN (Australia), replying to the Chairman's invitation to inform the Committee of the results of his consultations with delegations of countries which were land-based producers of minerals found in the sea-bed, said that since the ninth session the Australian delegation had urged that the provisions covering production policies in the convention should include clauses dealing with non-discriminatory market access and the prohibition of unfair economic policies which would harm other Contracting Parties.

13. At the end of the resumed ninth session, the informal negotiations had resulted in the inclusion of a clause on the market access problem which had not yet, however, been in its right place in the text.

14. During the first and second parts of the present session, further consultations had been held with delegations of potential sea-bed mining countries and land-based producers.

15. The sea-bed mining countries had made it clear that they would find it hard to accept obligations which went further than those they had accepted in other multilateral economic agreements, notably the General Agreement on Tariffs and Trade, and that if disputes arose because of an allegation of a breach of an unfair practices clause they should be dealt with wherever possible under General Agreement on Tariffs and Trade (GATT) rather than by the International Tribunal for the law of the sea, which would need to establish a special chamber for the purpose.

16. The land-based producers believed that it was possible to meet both those points. The new text proposed represented a considerable concession to the concerns of the sea-bed miners but did not go as far as the land-based producer delegations would like. Nevertheless it had been accepted as a basis for discussion. It read as follows:

“Unfair economic practices

“States Parties, in the production, processing, transport and marketing of minerals and commodities derived from the resources of the Area, shall avoid economic practices which cause, or threaten to cause, material injury to the interests of another State Party. In the implementation of this provision, the rights and obligations of States Parties contained in relevant multilateral trade agreements to which they are parties shall apply; in the settlement of disputes arising under this provision, States Parties shall, unless the parties otherwise agree, have recourse to the dispute settlement mechanisms of such agreements.”

17. In view of the complex implications of the introduction of a whole new industry, it was of paramount importance that a treaty obligation to avoid unfair practice should be explicitly affirmed in the convention.

18. The description of practices to be avoided had been deliberately left very broad, so as to avoid difficulties of definition. The primacy of the dispute settlement mechanisms at present existing in relevant multilateral trade agreements had been established. In the unlikely event that an appropriate mechanism might not be available, the parties concerned were left free to agree between themselves on a procedure for settlement.

19. He was not suggesting that there should be any debate on the proposals at that time. His purpose was merely to inform the Committee of the proposals that had been made and of what the parties in the negotiations had in mind for the next session.

20. Mr. WUENSCHÉ (German Democratic Republic) thanked the President of the Conference and the Chairman of the Committee for their efforts in working out a generally acceptable resolution on the establishment of the preparatory commission. His delegation could agree to the text of the draft resolution in WG.21/Informal Paper 17, but thought that in some respects it could be improved.

21. Referring to paragraph 5 (h), which stated that the commission should “prepare such draft rules, regulations and procedures as it deemed necessary to enable the Authority to commence its functions”, he said it was clear that the draft rules, regulations and procedures prepared by the commission would have to be submitted to the organs of the Authority for final adoption. In accordance with the relevant articles of the draft convention, such drafts would have to be adopted by consensus in the Council of the Authority; and, in his view, it was logical that the preparatory commission's voting procedure on such matters should be harmonized with that of the Council. The Authority might be prevented from starting its practical work if the Preparatory Commission were to adopt draft rules, regulations and procedures with a two-thirds or three-quarters majority and if the Council were unable to confirm them by consensus the drafts would then have to be renegotiated, which might take a very long time.

22. The work of the Commission should be concluded as quickly as possible. It was stated in the draft text that the Commission was to prepare a final report including its recommendations for presentation to the Assembly. His delegation therefore believed that it was unwise to link the work of the Commission with the entry into force of the convention, as was proposed in the footnote to paragraph 10. If the commission completed its final report before the entry into force of

the convention, i.e., before the convening of the first session of the Assembly, its activities should be suspended until the first session of the Assembly was convened. Once the commission had completed its final report, it would have no useful function to perform until the entry into force of the convention.

23. His delegation could agree to the other proposals contained in WG.21/Informal Paper 17.

24. Mr. de SOTO (Peru) thanked the Chairman for his report but said that the working group of 21 at the present session had not been as productive as it should have been. The Group of 77, for its part, had not spared any efforts to achieve a successful outcome. It had submitted an informal proposal on the preparatory commission (WG.21/Informal Paper 16). According to that proposal, the function of the preparatory commission would be to facilitate the entry into operation of the Authority as soon as the convention came into force. The Group of 77 believed that the commission should consist of the representatives of States which had signed the convention. The representatives of signatories of the final act might be given observer status but should not be entitled to participate in the decision-making process. It was hoped that a provision to that effect would encourage all States to sign the convention.

25. He had much to say on the proposals in WG.21/Informal Paper 17, but would reserve his comments until the next session of the Conference.

26. Mr. MAZILU (Romania) said that in his delegation's view it was logical for the final report of the preparatory commission to be presented to the Assembly. That procedure would be in conformity with existing practice and would meet the practical requirements of starting the work of the Authority with the effective participation of all States parties to the convention.

27. His delegation agreed in principle that the preparatory commission might establish some subsidiary bodies, but their number and the duration of their existence should be limited to the strict requirements of the commission's activities.

28. Since the Preparatory Commission was clearly a continuation of the Conference, it should logically be financed from the same source as the Conference itself, namely, from the regular budget of the United Nations.

29. Mr. YAKOVLEV (Union of Soviet Socialist Republics) said that his delegation would comment in detail on the Chairman's report when it had seen the text in writing. Its first impression, however, was that it could agree with a number of the points made, particularly those that reflected the work done on the preparatory commission.

30. Much work had been done by the working group of 21 on that subject, and the new draft resolution in WG.21/Informal Paper 17 provided a sound basis for a final solution to the problem of the preparatory commission.

31. However, the question of the decision-making process in the preparatory commission had not yet been solved. His own delegation believed that decisions on substantive matters should be taken by consensus, but it was prepared to enter into negotiations with the Group of 77 and other participants in order to find a compromise on the basis of the formula in article 161 of the draft convention.

32. In his delegation's view, the question of the composition of the Council of the Authority had already been settled. He therefore objected strongly to the consultations now being held on that subject, and to the Chairman's request for an intensification of those consultations. The Chairman's report would be more acceptable if the reference to those consultations was deleted when the report was submitted to the plenary Conference.

33. Mr. GEIZUE (Liberia) expressed his appreciation of the Chairman's report and assured him of the support of the African group. He was glad to note from the report that, with

regard to the question of production limitation, due account was being taken of the views of the African group and particularly of the landlocked countries belonging to it.

34. The group of African States had decided to supplement the recommendations it was submitting to the working group of 21 with a request that the secretariat of the Conference on the law of the sea should undertake a preliminary study of the potential impact of the convention on the economies of developing countries which were producers and exporters of the minerals to be extracted from the Area, with special reference to the formula in article 151 of the draft convention.

35. The group of African States would appreciate it if that study could be completed and made available to all participants before the convening of the next session of the Conference.

36. Mr. DORON (Israel) expressed his delegation's appreciation of the clarity with which the President of the Conference and the Chairman of the First Committee had prepared WG.21/Informal Paper 17 on the subject of the preparatory commission. He also wished to thank the Chairman for his exhaustive and interesting report.

37. His delegation had already expressed its views on some aspects relating to the Preparatory Commission in its statement at the 150th plenary meeting of the Conference, and its views on the matters mentioned in that statement had not changed. At the time of the 150th meeting, the Conference had had before it the draft resolution on the preparatory commission contained in document A/CONF.62/L.55.³ The other papers which had subsequently been issued on the subject (WG.21/Informal Paper 15 and Informal Paper 16) sought to introduce changes in the text in document A/CONF.62/L.55, and he wished to make some comments on that point.

38. With regard to operative paragraph 2 in WG.21/Informal Paper 15 and Informal Paper 16, his delegation agreed with others that the paragraph needed further consideration. The second sentence in the paragraph could lead to a rather unusual situation concerning the participation of observers in the work of the Preparatory Commission. In that connection, it was essential to remember that States might wish to receive full information on the nature and progress of the Preparatory Commission's work and on the problems encountered by it, as part of their decision-making process before they took action in respect of documents emanating from the Conference.

39. His delegation accordingly believed that full participation in the work of the Preparatory Commission should be open to all States entitled to participate in the Conference.

40. With regard to paragraph 7, his delegation felt that the Preparatory Commission should not prepare the rules for the international Tribunal for the law of the sea; that task should be left to the Tribunal itself.

41. His last comment at that stage related to operative paragraph 11 in WG.21/Informal Paper 15 and Informal Paper 16. In his delegation's view, the second alternative envisaged in paragraph 11 of WG.21/Informal Paper 15—namely, a loan provided by the United Nations—would be a better solution than meeting the expenses of the preparatory commission from the regular budget of the United Nations.

42. It should also be made clear in the draft resolution that the cost of services by the United Nations Secretariat, to which reference was made in paragraph 12 of both informal papers, should be met in the same manner—namely, by a loan.

43. His delegation had touched only on some parts of the draft resolution and wished to reserve its right to speak on the matter again on a later occasion.

44. The CHAIRMAN observed that WG.21/Informal Paper 17 was not before the Committee; and he requested dele-

³ *Ibid.*

gations not to refer to it since comments on the paper were out of order.

45. Mr. GRAU (Colombia) thanked the Chairman for his report. Despite the Chairman's appeal, he was obliged to refer to WG.21/Informal Paper 17. His country had supported the proposal to establish the seat of the international sea bed Authority in Jamaica, but had also from the outset stressed that for reasons of efficiency and economy the Preparatory Commission should obviously meet at United Nations Headquarters in New York, with the secretariat services that might be required; and it believed that the expenses of the preparatory commission should be met from the regular budget of the United Nations. Consequently, his delegation was opposed to paragraph 9 of WG.21/Informal Paper 17 and reserved the right to express its opinions on the document at greater length at the proper time.

46. Mr. GAYAN (Mauritius) observed that the United Kingdom delegation had at an earlier plenary meeting of the Conference stated that it was willing to consider drafting a proposal on the protection of investments. He therefore requested that delegation to state whether it now had some proposals to impart to the Committee.

47. The CHAIRMAN said that, since no objection had been raised to the Liberian delegation's request for a study to be undertaken by the Secretariat, he would take it that the Committee agreed to grant that request.

It was so decided.

48. Mr. WOOD (United Kingdom) thanked the Chairman for his detailed report on the work of the working group of 21, which actually indicated the areas of agreement and disagreement more clearly than the latest informal paper (WG.21/Informal Paper 17). Although the draft resolution in Informal Paper 17 contained a number of improvements, it did not, on a number of most important points, reflect the discussion which took place in the working group of 21. For example, it had been made quite clear in those discussions by the United Kingdom delegation, and others, that they could not accept the proposal that the expenses of the Preparatory Commission should be met by the regular budget of the United Nations.

49. With regard to the study which had been proposed by Liberia, his delegation felt that more guidance would be needed by the secretariat, and also that precise parameters would have to be specified.

50. In reply to the representative of Mauritius, he said that the point touched upon by that representative had been mentioned by the Chairman in his report and the United Kingdom delegation had nothing to add thereon.

51. Lastly, speaking on behalf of the States of the European Economic Community, and of the Community itself, he reserved the right to comment at a later stage on the statement made by the representative of Australia.

52. Mr. LARSSON (Sweden) congratulated the Chairman on his comprehensive and interesting report. The Swedish delegation was particularly gratified to note that the report included a reference to the composition of the Council, a question which still posed serious difficulties for several small and medium-sized industrialized countries. He was confident that an acceptable text could be found without upsetting the balance of article 161, paragraph 7. Delegations that had argued that new negotiations would destroy the compromise already reached were, in his view, trying to avoid a substantive discussion of the issue. That attitude towards a problem that raised difficulties for a whole group of countries ran counter to the spirit of compromise and consensus which had characterized the Conference.

53. Miss MARTIN-SANÉ (France) said that she fully realized that document WG.21/Informal Paper 17 was not before the Committee but before the working group of 21. The procedural ruling by the Chairman that any statements thereon made were out of order was therefore a sound one.

54. Since, however, certain statements had already been made on the document and she did not know whether they would be struck from the record, she wished to say briefly that, although the new paper reflected some progress, it left many points unsolved, and there were still many questions of substance remaining to be settled in the working group of 21.

55. She supported the United Kingdom representative's statement regarding the Liberian proposal for a study by the Secretariat.

56. Mr. MUDHO (Kenya), speaking on a point of order, objected to the statements by the delegations of the United Kingdom and France, which purported to question a decision already taken by the Committee. Those statements should be ruled out of order.

57. The CHAIRMAN observed that the statements in question could, from the procedural point of view, be treated as explanations of vote after the vote.

58. Mr. HAGE (Canada) expressed his appreciation of the Chairman's useful report on production policies. He too would welcome a study of the kind which had been proposed by Liberia, but wished to draw attention to the fact that a Secretariat study already existed on the economic implications of sea-bed mineral development in the international area (A/CONF.62/25).⁴

59. Lastly, he thanked the Australian representative for his report on the negotiations on unfair economic practices.

60. Mr. MUELLER (Federal Republic of Germany) thanked the Chairman for his extensive report. His delegation would at the appropriate time express its views on WG.21/Informal Paper 17, on which it largely agreed with the United Kingdom and France.

61. Mr. MUDHO (Kenya), speaking as a representative who did not participate in the proceedings of the working group of 21, expressed his appreciation of the reports by the Chairman and by the Australian representative.

62. Turning to WG.21/Informal Paper 17, he expressed the hope that his delegation would have an opportunity to comment thereon at a plenary meeting of the Conference.

63. Lastly, he expressed his dismay at the fact that any delegation should think it anything but logical that the preparatory commission should work at the seat of the Authority.

64. The CHAIRMAN invited the Special Representative of the Secretary-General to comment on the question of the study to be undertaken by the Secretariat.

65. Mr. ZULETA (Special Representative of the Secretary-General) observed that it was his duty to report on the financial implications of decisions taken by the Committee. The costs of the study requested by Liberia on behalf of the group of African States would have to be defrayed out of existing resources since no additional resources were available; and the study would be very limited and preliminary since the Secretariat could not enter into controversial matters.

66. With respect to the Chairman's reference to General Assembly resolution 31/140 in his report (A/CONF.62/C.1/L.29) he said that the resolution, and specifically paragraph 5 thereof, constituted a legislative mandate from the General Assembly with which the Secretariat must comply. He also expressed the view that the statement by the Chairman of the First Committee regarding difficulties for meetings at Headquarters and in Geneva did not reflect the explanations given by the Secretariat in a paper on potential financial implications for States parties to the future convention on the law of the sea (document A/CONF.62/L.65).

67. The CHAIRMAN declared that the First Committee had concluded its work for the tenth session of the Conference.

The meeting rose at 6.10 p.m.

⁴Official Records of the Third United Nations Conference on the Law of the Sea, vol. III (United Nations publication, Sales No. E.75.V.5).