

Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the First Committee 7th meeting

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73. There was a new awareness that neglect of commodity trade was not in the long-term interest of consuming nations and the Secretariat of OECD, in discussing inflation in its member States, had stated that the current crisis showed that prices which remained too low for too long endangered future supplies in the long run.

74. With respect to the possibilities of long-term commodity arrangements, both producers and consumers felt that stable

prices would be of benefit to all and the Secretary-General of UNCTAD had proposed a broad commodity approach to stabilize prices at an equitable and remunerative level.

75. The CHAIRMAN thanked the representative of UNCTAD for appearing before the Committee and said that members were gratified to learn that a representative of that organization would be present throughout the session.

The meeting rose at 5.30 p.m.

7th meeting

Wednesday, 17 July 1974, at 10.05 a.m.

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

Statements on the international régime and machinery (continued)

1. Mr. TARZI (Afghanistan) observed that the convening of the Third United Nations Conference on the Law of the Sea marked the beginning of a new era in the history of international law and that, for the first time, the international community was focusing its attention on the common heritage of mankind.

2. The international régime should be designed in such a way that no State would be able to extend its sovereignty unilaterally over any part of the international area and that all States could participate in the exploration and exploitation of it on an equal footing. Land-locked States should have the right of free access to the sea, a principle which should be embodied in the future convention.

3. In addition, the economic viability of the international zone must be ensured, and the concept of a common heritage would remain valid only if the zone was sufficiently vast. An International Authority with broad powers must be established to apply that concept. To uphold the principle of the equality of all States, the land-locked States should be fairly represented in all the organs of the Authority, and no State should be given preferential rights, such as the right of veto. Sufficient profits should accrue to the Authority for the developing States to be able to derive real benefit from the revenues earned from its activities. Since the situation of the land-locked and other geographically disadvantaged States was one of the principal factors responsible for the increase in the prices of their imports and exports and was holding back their economic development, his delegation believed that the distribution of benefits should take account of the need to improve the level of living of the peoples in developing countries. In addition, the more advanced States should make their technology accessible to the international community. It should be stressed that the exploration of the area and the exploitation of its raw materials should not have any detrimental effect on the production of the developing States and that the international area should be reserved exclusively for peaceful purposes.

4. Mr. BOAVIDA (Portugal), speaking with reference to the status, scope and basic provisions of the international régime, said that his delegation endorsed all the principles set forth in General Assembly resolution 2749 (XXV) and would like to see them reflected in a universally ratified and implemented treaty. The international area should be reserved exclusively for peaceful purposes, the exploration of the area and the exploitation of its resources should be carried on for the benefit of mankind as a whole, and due account should be taken of the interests and needs of developing countries in distributing the benefits derived from the exploitation of the area among States.

5. With regard to the limits of the area, Portugal agreed with the United Kingdom that, under existing international law, a coastal State already had sovereign rights over the resources of the continental margin. It believed that coastal States should also have the right to exercise their jurisdiction over a 200-nautical-mile economic zone, which they would be entitled to explore and in which they could exploit all living and non-living resources, provided that they recognized the freedom of navigation, overflight and the right to lay submarine cables and pipelines.

6. For that reason, his delegation was prepared to support variant D of article 1 as it appeared in the report of Sub-Committee I of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021 and Corr.1 and 3, vol. II, p. 51). It also maintained that for the purpose of the convention, the outer edge of the continental margin should be in the 4,000-metre isobath.

7. With regard to the structure, functions and powers of the future international machinery, he advocated the earliest possible establishment of a powerful International Authority within which the contracting parties to the convention would jointly and democratically manage the international sea-bed area and its resources on the basis of equality and mutual benefits. The Authority should discharge its regulatory duties for the exclusive benefit of the peoples of all countries and should not only systematically develop and manage the area, but also ensure the equitable sharing by all States of the benefits derived from the exploitation of its resources, taking into particular consideration the interests and needs of the developing countries. The Authority should be vested with such legal capacity as might be necessary for the full exercise of its functions and the fulfilment of its purposes. It should consist of an assembly comprising representatives of all the contracting States, which would be the supreme organ, exercising control over all the activities carried on by the other organs; a council with a more restricted membership which should formulate policies and submit them to the assembly; an enterprise entrusted with the exploitation of the area; and, lastly, a secretariat and a tribunal.

8. The convention should also include a provision declaring that the exploration and exploitation of the area should be undertaken in such a manner as to ensure the conservation and optimum utilization of its resources and the regulation of production. Fluctuations in the prices of raw materials should be avoided as far as possible, since they could adversely affect the exports of developing countries.

9. His delegation endorsed the provision included in the draft convention which would give to the State of historical and archaeological origin preferential rights over all objects of an

archaeological and historical nature found in the international area.

10. Finally, his delegation attached the greatest importance to the establishment of a compulsory procedure for the settlement of any disputes that might result from the implementation of the provisions of the new international régime.

11. Mr. SEPULVEDA (Mexico) observed that the first important thing that should be done was to determine the limits of the area to which the sea-bed régime would apply and over which the international organization would exercise its authority. His delegation believed that it would be desirable and timely for the Committee to decide now, in unambiguous terms, in favour of an international sea-bed area having as its limit the outer lower edge of the continental margin which adjoined the abyssal plains or, when that edge was at a distance of less than 200 miles from the coast, up to that distance. A prompt decision on that issue would facilitate the work of the Second Committee.

12. Mexico also deemed it necessary to consider two matters that were of great importance to the sea-bed régime. First, it was essential to state to what part of the marine resources the régime would apply and, secondly, it was clear that the size of those resources would depend on the kind of powers given to the Authority.

13. As far as the first point was concerned, his delegation regarded as inadequate a system restricted to the exploration of the sea-bed and ocean floor and the exploitation of their minerals and other non-living resources. Such a system would undermine the very spirit of the future international régime and would be very detrimental to the content and scope of the concept of a common heritage. The Committee should legislate in a forward-looking way; that is to say, in preparing rules, it should take as a basis the widest possible array of hypothetical cases.

14. He had listened with interest to the argument advanced by Mrs. Mann Borgese of the International Ocean Institute at the 3rd meeting. He believed that the régime of the sea-bed and that of the superjacent waters should be closely linked. That meant that the competent organization should be entrusted with the management and supervision of the renewable and non-renewable resources of the sea-bed and also of those in the water column.

15. A formula linking the régime governing international waters with that governing the sea-bed was the only feasible way of establishing machinery to regulate the various ways of using and exploiting ocean space. That formula would make it possible to establish a harmonious balance between the different uses of the sea, which were frequently divergent or conflicting. Over-all regulation would enable the organization responsible to determine how the international community could derive the maximum benefits from the resources of the sea.

16. That objective could not be attained unless the Authority was given broad powers. The establishment of a powerful central body was an essential element in the list of provisions that the Committee should adopt. Mexico was not in favour of a feeble body that would passively watch while the wealth of the sea-bed was distributed among the advanced countries. The developing countries wanted a fair share of the benefits to be derived from the sea, and that could only be guaranteed by a strong Authority.

17. The Authority should consist of a non-discriminatory and democratic plenary assembly, which would formulate general policy to govern the activities of the Authority; a council with restricted membership but which would be representative of the various interests at stake, which would carry out the policy approved by the assembly and supervise its implementation; and, finally, an enterprise, which would be responsible for all the technical, industrial and commercial activities. The idea of an enterprise, which had been advanced by Mexico and

12 other Latin America countries in document A/AC.138/49,¹ was intended to establish the straightforward principle that the Authority should itself undertake the exploration of the area and the exploitation of its resources. Should it require technical or financial resources, it could conclude service contracts or enter into partnership with mixed companies; if it decided upon the latter, its contribution could be the resources to be exploited. The international machinery would naturally retain control in all cases over mixed companies or the activities of entities which had signed such contracts.

18. One of the important features of the Latin American draft was that it did not enable the Authority to grant licences or concessions for the exploration or exploitation of the area. The reason was perfectly simple: any licensing system conferred ownership of the resources extracted on the operator, with the result that part of the common heritage was diverted into other hands and the Authority was deprived of its marketing functions, with the resulting loss of its main source of revenue and benefits.

19. Mr. RATINER (United States of America) pointed out that he had refrained from raising a point of order when the representative of Mexico had touched on issues that had nothing to do with the items on the agenda of the First Committee. He thought it important, however, to draw attention to the fact that the First Committee must deal essentially with the international régime to apply to the sea-bed and ocean floor beyond the limits of national jurisdiction. If members of the Committee continued to raise questions that were not relevant, either during the work of the Committee or in the unofficial meetings, his delegation would be obliged to raise points of order. The mandate of the First Committee was not to regulate activities carried out in the waters superjacent to the sea-bed.

20. The CHAIRMAN appealed to delegations to show moderation. Although marine issues were closely interlinked, he asked delegations to try to touch on only the points that were of direct interest to the Committee. He hoped there would be no need to raise points of order and that the attention of the Committee would not be diverted from the task it had been given.

21. Mr. MAKONNEN (Ethiopia) said that the proliferation of alternative texts and square brackets in the draft articles on the régime and machinery (*ibid.*, p. 51) revealed the existence of conflicts between the interests of coastal States and those of flag States.

22. Both the Committee and the whole Conference must approach their work on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV)), and hence of the concept of the common heritage. If that concept was to be truly meaningful, it must apply to an area that was not deprived of presently known and realizable resources, including hydrocarbons. It was in the machinery that the land-locked States and others would have the greatest stake with regard to drawing on the resources of the area. He pointed out that many coastal States bordered on semi-closed seas or had short coastlines and therefore had very little to gain from an economic zone 200 miles wide. Apart from the question of availability of appreciable resources, the 25 African coastal States that were members of the Organization of African Unity, including his own, had coastlines between 22 and 900 nautical miles long; that could not be compared with the 10,000 nautical miles or more coastline of the five major coastal States. Consequently, the adoption of an extensive resource jurisdiction, be it on the basis of the concept of a continental shelf or economic zone, should not be at the expense of the common heritage. His delegation would support the claim for exclusive coastal State resource jurisdiction.

¹ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21, annex I, sect. 8.

tion provided there were regional arrangements for all States to exploit some of the resources in the area. The convention must take that point into account; the States concerned could then make more detailed arrangements. The Declaration of the Organization of African Unity (A/CONF.62/33) merited the Committee's attention in that respect. If the international area could not begin from the outer limit of the 200-mile zone, at least some of the revenues derived by the coastal States from that part beyond the 200-mile limit should be transferred to the International Authority, whose creation would then be justified.

23. As for the international machinery, his delegation saw no difficulty in the establishment of the principal organs proposed in the draft articles, provided that all parties to the convention were duly represented and that there would be no veto or weighted voting system in the decision-making process. It was impossible to say whether one system of exploitation or another was the only way to apply the concept of the common heritage. The two main approaches—an enterprise and licences—should be combined. The Authority could choose from several systems and employ one or another according to circumstances.

24. In view of the likelihood of conflicts of interest or overlapping competences, parties to the future convention should have recourse to a forum for the settlement of disputes in which all could have full faith.

25. Mr. LYSAGHT (Ireland) said the fundamental premise of his Government's approach to the matters within the purview of the Committee was that the resources of the sea-bed should be used to narrow the existing economic gap between the richer and the poorer nations. His delegation was willing to consider any proposal which seemed likely to achieve that end. It seemed advisable to vest the power of control over the utilization of resources in a body whose composition included an assembly, in which all States would be represented, and a council of more limited membership, protected from domination by the industrially powerful nations. Although divergent interests should be represented in the council, those of the poorer countries should be given additional weighting. Similarly, the bulk of the profits earned by the International Authority should be distributed among the economically disadvantaged countries. The proposal submitted by the United Republic of Tanzania² was very interesting in that respect; population and *per capita* income were the main factors to be taken into account. Whatever system of distribution was decided upon, it should be based on objective criteria defined in the convention. In order to ensure maximum profits, the authority must operate efficiently and must be free to choose the most suitable form of exploitation. In particular, it should be free to license companies directly without the intervention of States.

26. It was essential to distinguish the Authority's commercial functions from its regulatory power in the fight against pollution and its social function of training personnel for the transfer of technology, to avoid its becoming an inefficient bureaucratic apparatus.

27. If the Authority was going to have to operate initially by means of some form of partnership arrangements with companies from technologically advanced countries, greater confidence must be generated among those companies so as to ensure that they would be willing to co-operate with the Authority on reasonable terms. It was therefore essential to ensure security of investment and provide for the compulsory settlement of disputes.

28. The representative of the United Nations Conference on Trade and Development at the 6th meeting had dispelled any doubts there might have been concerning the need to regulate the marketing of sea-bed products in the interests of primary-

producing countries, but to solve the problem of the effects of sea-bed production on the economies of those countries, there would have to be a general stabilization of commodity prices. Such a solution could not be achieved within the limited context of the Authority.

29. Mr. AL-IBRAHIM (Kuwait) said that the Conference should be able to start taking decisions, because it had numerous studies on international machinery and the economic implications of sea-bed exploitation available to it and a number of draft treaty articles before it. Moreover, the developing countries were united on the main issues.

30. The régime was an integral whole, and the international machinery was an inseparable part of it. The international convention that would bring the régime into being should be open to all States, whether or not they were Members of the United Nations. The convention should prohibit reservations that were incompatible with its object and purpose. There was clearly a conflict between the approach of the industrially advanced countries and that of the developing countries. The major maritime powers insisted on having weighted voting in the council and demanded that the Authority should be a licensing body without any operational functions. His delegation believed that the International Authority should have comprehensive powers which it could exercise immediately and other powers that it could use subsequently, once it was endowed with the necessary material and human resources. Its functions should include the organization, administration, control and co-ordination of all operations relating to the development of sea-bed resources. It also had a major role to play in the field of training and transfer of technology; that would enable it to fight against the monopoly position which the multinational corporations from the developed countries still enjoyed.

31. The Authority should consist of an assembly, a council and a secretariat. The assembly should be the main legislative body and supreme policy-making organ. It would be responsible for seeing that the resources of the sea-bed were exploited as effectively as possible and shared equitably according to definite norms that would translate into reality the concept of the common heritage of mankind. The council would be the executive body and would act under the control and guidance of the assembly. It would be competent to grant licences, to set and collect fees, and to distribute benefits equitably. The secretariat should be so recruited as to secure the highest standards of efficiency, competence and integrity and to ensure equitable geographical representation.

32. Studies recently published by the Secretariat of the United Nations and by some of the specialized agencies and the statement made by the representative of the United Nations Conference on Trade and Development had shown clearly that sea-bed exploitation would have an adverse effect on the economy of some of the developing countries unless it was properly regulated. His delegation was firmly convinced that only an International Authority with comprehensive powers was capable of dealing with that problem on a long-term basis. Such an Authority would ensure rational exploitation and would prevent waste and mismanagement. It should establish an order of priority for exploitation based on the requirements of world development, taking into account the special situation of developing countries that produced non-renewable minerals.

33. His delegation hoped that it would be possible to reach agreement on those major issues despite existing differences. The viewpoint of the developing countries was a just one and must be accepted. His delegation hoped that, after constructive negotiations, a consensus decision would be taken without a vote.

34. Mr. WARIOBA (United Republic of Tanzania) said that he hoped that the Conference would not make the mistakes that had led to the many criticisms of the Treaty of Versailles; no country must consider that its interests had been harmed.

² *Ibid.*, sect. 1.

The Conference must begin with political decisions on the fundamental questions. It must make its intentions clear and only embark upon the technical work when everyone knew what they were aiming at.

35. The Committee had two basic issues to resolve: who should exploit the area, and the structure, powers and functions of the international machinery.

36. With regard to the first issue, there was inherent in it the question of who owned the area. The reply of course was that it was jointly owned by all mankind. History had fully demonstrated that in order to guarantee that wealth produced from resources went back to its lawful owner, that owner must himself have full control of the means of production. A licensing system did not guarantee the participation of the owner in the profits derived from the exploitation. That did not mean that entities outside the Authority should not participate in the activities in the international area, because it would be necessary to call on them. They should not however be allowed to determine the fate of the common heritage as they had ruled the economies of developing countries. In short, the Authority must itself exploit the area, although it might have to do so with the co-operation of other entities, but in that case, their role must be directly controlled by it.

37. Companies had always been the weapons of colonialism, imperialism, neo-colonialism and exploitation. East Africa knew that from experience, because the German East Africa Company and the British East Africa Company had been the major instruments of foreign rule in that region. It was again through such companies that the third world was being drained of its natural and human resources. Every effort must be made to see that that situation was not perpetuated.

38. The Conference could create either a machinery which would represent and promote the interests of mankind as a whole or one that would perpetuate, if not intensify, the oppression of the vast majority of the world community by a few technologically advanced countries.

39. A system of privilege for the super-Powers or the technically advanced countries was not in the interest of mankind, let alone of lasting peace. A system of inequitable geographical representation could never be justified once it had been agreed that all peoples of the world had equal rights in respect to the international area. The same applied to the voting system.

40. If the aim was to ensure that all the activities in the area benefited mankind as a whole, the entire world community must be fully involved in the decision-making mechanism—hence the need to ensure that in the international institutions and their organs, all peoples were equitably represented, the decision-making procedures were democratic and that the Authority had strong and comprehensive powers. The machinery should have an assembly of representatives from all States, where the policy decisions would be made, a council, in which all regions would be equitably represented and where the procedures would observe the equality of all, other specialized organs to deal with various technical matters, such as the enterprise, a secretariat and a tribunal for the peaceful settlement of disputes.

41. His delegation had not found it necessary at the moment to go into the details of subsidiary issues because the fundamental principles must first be agreed upon.

42. Mr. McLOUGHLIN (Fiji) said that his delegation had already expressed its views on the structure and composition of the International Authority, by which it meant the executive organ, and would not repeat them. It unreservedly supported the principle of an authority which was itself empowered to explore and exploit the resources of the international area, but only when it had the necessary financial means; for the moment, it could undertake operations in association with States or groups of States or consortia, which did not exclude the possibility of its participation in joint enterprises on a non-

contributory basis at any time. His delegation would be in favour of the conclusion of work contract agreements under which the Authority would retain the ownership of the resources of the area and the enterprises, whether public or private, would be allowed to exploit particular sectors in exchange for part of the resources obtained from them, the rest reverting to the Authority either in kind or in cash.

43. The Authority should decide whether it or the enterprise concerned were to be responsible for marketing. The important point was the control exercised by the Authority over the production and sharing out of the resources for the benefit of the whole of mankind, particularly the developing countries. The principle of control was applied jointly for production on land and offshore, and there was no reason why it should not also be applied for the sea-bed. Care must be taken to avoid both wasteful over-production to the detriment of the conventional producer and unnecessary underproduction to the detriment of the consumer. In other words, the exploitation of the resources of the sea-bed should not be used to bring down the prices of products obtained from the land, because of the detrimental effect of such a procedure on the developing countries, whose national income, already heavily burdened by the high cost of their imports of manufactures, was entirely dependent on income from commodities. It was well known that, during the past few years, prices to the consumer had soared while the prices obtained by producers had remained static. If the Authority controlled production, it should be able to ensure that small countries did not suffer from such fluctuations. The producer must naturally receive his share of the profits; the same was true of countries that were poor in natural resources: they should not pay more than was necessary for the energy and manufactured products they needed. For the moment, those questions were outside the competence of the Authority, but it was an extremely important problem and a solution must be found to it.

44. If the Authority decided, in the exercise of its powers of control, to increase or to reduce production when necessary, it must give the reasons for such action, and in cases of disagreement, the parties concerned should be entitled to request the arbitration of a tribunal established for that purpose.

45. Mr. Soo Gil PARK (Republic of Korea) said that, in order to give full effect to the common heritage concept, the international régime must be established according to the following principles, about which his delegation was happy to see that a consensus appeared to be emerging: first, the international sea-bed and its mineral resources should be designated the common heritage of mankind, and their exploitation should benefit all countries; secondly, no country should be allowed to appropriate any part of the sea-bed and all countries, including the land-locked and geographically disadvantaged countries, should have access to the area; thirdly, benefits derived from the exploitation of the area and its resources should be distributed equitably among nations, taking into consideration the particular needs of the developing countries.

46. The régime should apply only within the limits of the area and it should not affect the legal status of the high sea and the air space above it. The proposals for an all-embracing régime for the ocean space as a whole would have less chance of general acceptance because of the various questions such a régime involved, which were too complex to be effectively solved.

47. There seemed to be general agreement that the régime should be established by a universal convention setting out basic principles, which would be supplemented by detailed regulations. His delegation thought that such a procedure was necessary, so that every country could know exactly what were the conditions and the possibilities for the exploitation of the sea, and the international community could at last possess stable legal rules.

48. In view of the possible effects of the mining of the sea-bed, adequate safeguards must be provided to prevent abuse of the marine environment and to establish the duties and obligations of States with regard to any damage caused.

49. Freedom of scientific research in the international area should be encouraged for the benefit of mankind as a whole. There must be a more exact definition of the term "scientific research" in order to avoid the problems posed by different interpretations.

50. With regard to the functions of the International Authority, and in particular the decision-making process, his delegation was in favour of the principle of equal votes, with no State having special privileges such as that of veto and no derogation from the principle of the sovereign equality of States. The developing countries should not only share in the benefits derived from the exploitation of the resources of the international area but also participate effectively in all aspects of the exploration and management of the common heritage. In that connexion, the proposal made by the Latin American countries in document A/AC.138/49 merited serious consideration. That proposal stated that the International Authority would engage in its own exploration and exploitation activities but would also be able to avail itself of natural or juridical, public or private, national or international persons through either a system of contracts or the establishment of joint ventures. The Tanzanian draft proposal, according to which the International Authority would be empowered to explore and exploit the resources either by its own means or by issuing licences to individuals or groups, juridical or natural persons, under the sponsorship of its members, seemed to strike a reasonable balance between the licensing system of the developed nations and the enterprise system of the developing nations, and might well provide the basis for a compromise. It was also necessary to ensure a reasonable return on investment, in order to provide incentives for exploitation activities.

51. Finally, in view of the adverse effects which the exploitation of the international area might have on the prices of land-produced minerals, the International Authority should be empowered to control production in such a manner as to mitigate the negative effects on the development of the economies of the developing nations that were exporters of raw materials.

52. Mr. KHARAS (Pakistan) said that the concept of the common heritage of mankind should not be limited by restrictive interpretations for the benefit of a single State or group of States. The task of the Committee was to devise an appropriate international régime and machinery to ensure that the resources of the area would be exploited for the benefit of all mankind, and in particular, for the developing countries. Much remained to be done in that connexion, and the process of evaluation of proposals and negotiations, which must precede decisions, still lay ahead.

53. He reminded the Committee of the important decisions taken by the General Assembly at its sixth special session in the Declaration on the Establishment of a New International Economic Order³ on which the new international economic order was to be based. The General Assembly had recognized that the prosperity of the international community as a whole depended on that of its constituent parts, that the interests of developed countries could no longer be isolated from those of the developing countries and that there was a close interrelationship between the prosperity of the former and the development of the latter. All countries, and particularly the developed countries, must take a comprehensive view of the international economy and lay greater stress on long-term goals that need not, at all times, coincide with short-term gains. It was in that spirit that his delegation approached the concept of the common heritage of mankind and recognized the need to work for the following goals: maximum exploitation of ocean re-

sources; minimization of the adverse impact of nodule mining on the exports of mineral-producing developing countries; attainment of the highest possible revenues for the future International Authority; and preservation of the marine environment and conservation of ocean resources. It was apparent that all those objectives were not always mutually compatible and that an acceptable order of priorities must be established, taking into consideration all relevant factors. A balance would have to be struck between the desire of some to undertake unbridled exploitation of ocean resources and the imperatives of equity and optimum economic exploitation of those resources, which would necessitate a régime of controls.

54. His delegation therefore took the view that the rational development of ocean resources could be ensured only through the establishment of a strong régime governing the international area and an authority with adequate powers and machinery to give effect to that régime. It favoured the treatment of the ocean space beyond national jurisdiction as a single entity, in which no distinction was made between living and non-living resources with regard to the regulation of their exploitation and conservation and to the distribution of benefits derived from them. The new international régime should encompass the whole ocean space beyond the limits of national jurisdiction and all activities related thereto.

55. The imperatives of equitable distribution and optimum exploitation of the long-term economic interests of the whole international community would necessitate the direct control of such activities by the future International Authority, despite the organizational, financial and technological problems that would have to be overcome at the initial stages. In fact, during the first stages, the Authority should be provided with the necessary flexibility to tide over the financial and technological difficulties. As long as its direct control over the exploitation and distribution of resources was ensured, it should be able to employ any methods it considered suitable.

56. As for the international machinery, his delegation was, like other delegations, firmly of the view that it should be based on the principle of sovereign equality and equitable geographical distribution. It should be vested with comprehensive powers to deal with the exploration of the area and the exploitation of its resources, the equitable distribution of benefits derived therefrom, bearing in mind the special needs of the developing countries, the conservation of the marine environment and the regulation of the conduct of scientific research in the area. It should in fact be an international economic enterprise working for the benefit of all mankind. There was no doubt that a consensus was emerging with regard to the structure of the machinery. His delegation agreed that there should be an assembly, in which all States were represented on the basis of sovereign equality, a council composed of a smaller number of States on the basis of equitable geographical distribution, a secretariat, and an operating arm which would conduct all technological, commercial and industrial activities relating to the exploration of the area and the exploitation of its resources. In addition, suitable machinery must be established for the settlement of disputes.

57. His delegation envisaged the assembly as the supreme legislative authority governing the international régime and the council as a subsidiary executive body to carry out the policies laid down by the assembly. The members of the council should be elected by the assembly on the basis of the principle of equitable geographical distribution, there should be no permanent members, and membership should be for a fixed period of two to three years, which need not exclude the possibility of re-election. All members of the council should have equal voting rights with regard to all matters that came before it, and no State or group of States should have weighted voting powers or a veto.

58. Mr. NOVAKOVIĆ (Yugoslavia) said that his country was particularly interested in the application of the principle of

³ Resolution 3201 (S-VI).

the common heritage of mankind. The adoption of the Declaration of Principles, based on that concept, was the most important moment in the development of the contemporary law of the sea and all its elements should be reflected in the future convention. In that respect, the principles of the peaceful uses of the area, non-appropriation, and the exploitation of the resources for the benefit of mankind as a whole should be particularly borne in mind.

59. With regard to the machinery to be established, his delegation considered that its basic functions, namely the exploration of the area, the exploitation of its resources and the sharing of benefits, could be ensured only by setting up a strong and efficient Authority. The future convention should achieve full universality to be viable; the Authority, in order to earn the confidence of all its members, should be organized on democratic principles.

60. Since the resources of the area should be used for the benefit of mankind as a whole, the policy and the regulatory powers of the Authority should be under the direct control of all countries. The assembly, as the highest and most representative body of the Authority, in which all States should have one vote, should have the broadest political and normative powers. In view of the powers of the assembly, the council should have only executive powers, as well as those rights and duties that derived from the convention or that might be given by the assembly as provided by the convention. The composition of the council should be guided by the criterion of equitable geographical representation, taking especially into account the interests of the developing countries. No member of the council should have a privileged position or be a permanent member because of its financial or economic power or technological advances. Rotation of membership should be appropriately applied in the council. If a legal position was given to some particular groups in the main bodies of the Authority, it could create rivalry instead of encouraging peaceful co-operation among States.

61. With regard to the question of who might explore and exploit the area, Yugoslavia, like most developing countries, could not accept that the Authority should limit its activity to co-ordinating licensing in the area. The resolution concerning the law of the sea adopted at the Fourth Conference of Heads of State or Government of the Non-Aligned Countries held at Algiers in 1973 reaffirmed the need to set up an International Authority having effective control, either directly or by any other means on which it might decide, over all activities related to the exploration of the area and the exploitation of its resources. That resolution stressed the primary role of the Authority in the direct exploitation of the area, allowing at the same time other forms of exploitation if adopted by the Authority.

62. The principle of the just distribution of benefits should be applied in such a way as to ensure the preferential treatment of developing countries, and particularly of the land-locked and geographically disadvantaged countries.

63. His delegation supported the opinion that the Authority must have enough power and the function to regulate the activities connected with scientific research and to facilitate, *inter alia*, the access to the results of such research for all States and for mankind as a whole.

64. With regard to the problem of the economic consequences of the exploitation of resources from the sea-bed, the solution should conform to the conclusions of the sixth special session of the General Assembly on raw materials and development, as well as to the activities of the United Nations Conference on Trade and Development in that field.

65. Mrs. MATHEY (Congo) said that General Assembly resolution 2749 (XXV) had set the stage for a new form of international co-operation in the matter of the sea-bed and the ocean floor, based on the concept of the common heritage of man-

kind. The resolution reflected the Assembly's intent to seek to close the current gap between developed and developing countries.

66. Her delegation stressed the fact that the exploitation of mineral resources in the international area must not jeopardize the interests of developing countries that produced and exported those minerals. It was also necessary to ensure that the disparity in technical and financial resources of the different countries would not result in industrialized States monopolizing exploitation of the area. Her delegation therefore appealed to the industrialized States to contribute effectively to the training of specialists of the third world and to the effective transfer of technical data, failing which, as the Venezuelan delegation had said, it would be proved once again that it was impossible to involve developing countries in building a new order based on economic and social justice.

67. Her delegation was anxious to see resolution 2749 (XXV) translated into reality and therefore supported the establishment of international machinery to regulate the area. The machinery which would have a legal personality should be provided with broad powers extending, *inter alia*, to exploration and exploitation of the area, marketing of its products, equitable sharing of the benefits, controlling as far as possible the unfavourable consequences of the exploitation of the area, particularly fluctuations in the price of raw materials, and finally protecting the marine environment and ensuring that the area was used for peaceful purposes.

68. Turning to the question of who would exploit the area, her delegation considered that such a role belonged to the international community and should be exercised through an international public enterprise under the control and in the interests of all members. In view of the large financial and technical resources required, an intermediate stage of co-operation should be envisaged between public and private capital in the form of mixed economy companies, with the public capital holding a substantial majority share so as to ensure the greatest degree of joint management—an essential characteristic of the concept of common heritage.

69. With regard to the structure and functions of the international machinery and its various organs, her delegation, just as many others, envisaged an Authority consisting of five organs: a plenary organ, the assembly, composed of all the States parties to the instrument establishing the Authority on the basis of equality of sovereignty; an executive organ with a limited composition, the council, whose members would be elected by the assembly, taking duly into account the need for equitable geographic distribution and the diversity of situations of the different countries; an enterprise, the organ which would ensure technical liaison with any participants and which could carry out activities in the area on its own account; a secretariat and a system for the settlement of differences with simple rules of procedure. Finally, her delegation formally opposed any formula which would give preponderance to certain States within the organs simply on the basis of power or wealth.

70. Mr. RAMIREZ (Ecuador) stated that the principle of the common heritage of mankind adopted under resolution 2749 (XXV) should be the mainstay of the new legal system. That principle superseded the doctrine of *res nullius* and transcended, as the President of the Assembly had pointed out, the opposition between the doctrines of *res nullius* and *res communis*, the application of which had often in the past resulted in arbitrary and irresponsible acts in benefit of some States and at the expense of others that did not have then the technical and financial means required to derive profit from the high seas and its resources.

71. Since the principle of *res nullius* was out-dated, the principle of common heritage of mankind was clearly applicable to superjacent waters and should even take the form of a

single régime that would cover any kind of problems such as suspended particles of metal in the sea water, and pollution among others.

72. Ecuador considered that the principle of the common heritage should apply to the entire area beyond the limits of national jurisdiction, namely, the international area, taking into account certain well-established freedoms, and that it should be closely co-ordinated with the single régime that its delegation proposed for the zone of national sovereignty and jurisdiction, which was 200 miles for Ecuador. Within the latter zone, however, *jus communicationis* would be preserved under international free passage. The new international sea law should also preserve the sovereignty of States and promote their economic and social development, the welfare of the peoples and international solidarity and co-operation.

73. The position of Ecuador on the régime and the international machinery was set forth in document A/AC.138/49 jointly submitted with 12 other Latin American States, in which the guidelines coincided with those of the African and Asian States.

74. The principle of the common heritage could not be respected if the 10 commandments referred to, in connexion with the Declaration of Principles, by the representative of Jamaica at the 4th meeting, were not followed. In that connexion, the delegate of Ecuador mentioned five points which he considered particularly significant: first, the international régime and machinery should have jurisdiction over the area, which meant the power to regulate and control all matters concerning the area; secondly, the International Authority administering the régime must have sufficient powers and flexibility to adapt to changes resulting from technical progress and to ensure the marketing of raw materials; thirdly, the international organ should include an enterprise which would enable it to exploit directly or jointly with States or companies, the latter being under the responsibility of the State to which they belonged.

75. Ecuador was strongly opposed to any licensing system, which it considered contrary to the spirit of the Declaration of Principles and which would tend to award the most productive sectors to consortia or to international companies. It was not a question of excluding the latter and indeed in most cases they would be the ones exploring and exploiting the area, but simply of bringing them within a system of contracts of opera-

tion or association which would clearly reflect the power of control of the International Authority and its enterprises as well as the responsibility of the authority towards member States. The rational joint administration of the heritage of mankind was incompatible with the system of licences.

76. Fourthly, with regard to the structure of the international body, Ecuador considered that the assembly should be its only central organ where all power would be concentrated. It would be composed of all the members, each having equal power. Any proposal aimed at establishing categories or classes of privileged States was unacceptable as contrary to the Declaration of Principles and the concept of sovereign equality of States enshrined in the Charter.

77. Fifthly, Ecuador shared the view of those strongly opposed to the suspension of the moratorium called for in resolution 2574D (XXIV) and was therefore ready to join in any action to neutralize the manoeuvres of States or of companies that claimed to exploit unilaterally the area prior to adoption of the international régime.

78. The delegation of Ecuador reserved the right to intervene on other important questions, such as the settlement of differences.

79. Speaking in exercise of his right of reply, Mr. SEPULVEDA (Mexico), with whom Mr. FONSECA TRUQUE (Colombia) and Mr. MARQUEZ (Venezuela) associated themselves, thanked the representative of the United States for not having interrupted him when he was stating the views of his delegation, but considered that the intervention of the United States delegation was out of place. A close reading of the terms of reference of the Committee did not support the restrictive interpretation the United States delegation had given to the question before the Committee. Nothing prevented the Committee from assisting the Second Committee in determining the limits of the international area. Furthermore, the questions concerning the exploration of the area and the exploitation of its resources were related to nearly all the other activities of the Conference, and any attempt to fix any rigid frame was inadmissible. It must be borne in mind that the Conference was a meeting of plenipotentiaries aimed at finding solutions in the interest of all and consequently it was inappropriate to attempt to compartmentalize the various issues.

The meeting rose at 1.15 p.m.

8th meeting

Wednesday, 17 July 1974, at 3.10 p.m.

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

Statements on the international régime and machinery (concluded)

1. Mr. MARSIT (Tunisia) reaffirmed his delegation's support for the concept of the common heritage of mankind. That was the basic principle which should govern the Committee's decisions on the main points before it, namely, the extent of the international area, the powers of the International Authority which would be responsible for administering the common heritage and the means of sharing the benefits of the exploitation of that area among States.

2. His delegation would support any steps taken to prevent a reduction in the size of the area, without prejudice to the legitimate rights of coastal States. In the light of those considerations, his delegation had agreed to the concept of an economic zone of not more than 200 nautical miles, even though the size

of its continental shelf could enable his country to claim a broader area. It had always supported the theory that the maritime space claimed by islands should be established in accordance with objective criteria in order not to reduce the size of the international area and it was surprised that all land-locked States did not endorse that point of view.

3. It was not, however, enough to guarantee the size of the international area. The Authority responsible for it must have wide powers in order that it might effectively control its exploration and exploitation. It must therefore have a full, autonomous legal personality and be composed of the following bodies: a general assembly, which took the most important decisions and on which all States were represented on an equal footing; an executive council responsible to the assembly, and faithfully reflecting its composition; an operational body exclu-