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35th meeting of the First Committee

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35th meeting

Friday, 10 September 1976, at 11.15 a.m.

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

Final report by the Co-Chairmen on the activities of the Workshop *(continued)* (A/CONF.62/C.1/WR.5 and Add.1)

1. Mr. FONSECA-TRUQUE (Colombia) said that the final report on the activities of the workshop showed the profound differences that still existed, particularly regarding the negotiation of some of the most important issues, dealt with in the first part of the convention. In spite of the efforts made, the anticipated progress had not been achieved. Only if it were certain that all delegations were motivated by a spirit of compromise and genuine flexibility and would have sufficient authority from their Governments to take substantive decisions, could a further session of the Conference be justified. At the present session, consideration had been given only to articles 22 and 23 and some paragraphs of annex I of part I of the revised single negotiating text (See A/CONF.62/WP.8/Rev.1).[1] His delegation appreciated the support given by some industrialized countries to the paper of the Group of 77, which showed that the position adopted by consensus by the developing countries was not an extreme one but was sufficiently flexible to accommodate the legitimate aspirations of the countries that had the necessary technology and financial resources for the exploitation of the ocean floor.

2. However, no attempt was made in workshop papers Nos. 2 and 3 to give any real content to the concept of the "common heritage of mankind". On the one hand a small group of socialist countries felt that States should be in charge of the system for the exploitation of the resources of the sea-bed beyond national jurisdiction, and that the Authority should have the secondary role of a mere administrative supervisor; on the other hand the equally small group of industrialized countries insisted on the establishment of two parallel systems for the exploitation of resources, and was unwilling to give the Authority the necessary powers to regulate access by States, State enterprises and natural and juridical persons to the sea-bed. The merit of the proposal contained in workshop paper No. 1 was that the system for the exploitation of resources would be based on the concept of a "common heritage" and that the Authority would be given reasonable negotiating powers so as to safeguard the interests of the international community as a whole.

3. In the opinion of some advanced countries, the developing countries should accept the parallel system and the system of automatic access to the sea-bed in exchange for acceptance by the advanced countries of the concept that the Enterprise should be a mechanism with adequate capacity for the direct exploitation of resources. That argument was not valid.' Although an overwhelming majority of countries had agreed to the establishment of the Enterprise as an operating arm of the Authority, there was no reason to suppose that the international community contemplated establishing an Enterprise that was not effective and profitable. It should be acknowledged once and for all that automatic access was incompatible with the new world economic order.

4. His delegation would like agreement to be reached on a balanced and fair convention striking a balance between legitimate aspirations and a spirit of equity. Colombia had worked hard towards that goal. It had sent delegations to all the meetings that had been held and, to be frank, it was obliged to state that it had found the present session disappointing. The dilemma was obvious: a formula must be found that would guarantee, on the one hand, access by the developing countries to technology and, on the other hand, access, regulated under the control of the Authority, by States, State enterprises and natural and juridical persons to the area of the sea-bed beyond the limits of national jurisdiction. In order to overcome the problem it would be necessary to work with determination and in the firm belief that the only suitable course was the course of international co-operation.

5. Mr. HYERA (United Republic of Tanzania) said that the report by the Co-Chairmen on the activities of the workshop did not properly reflect the situation. After the analysis of the three workshop papers, it should have mentioned which countries or groups of countries had submitted the papers and indicated the degree of support for each of the positions.

6. As for the progress made, much ground had been covered since the beginning of the Conference and it was only natural that some people should begin to worry about the future of the Conference. Perhaps the time had come not only to assess the methods of work but also to reconsider the procedure of an endless search for consensus which had so far been one of the main obstacles to the achievement of agreement on certain parts of the convention. It had been pointed out that, if the convention was to be meaningful and effective, it must be agreed upon by consensus. If a majority of 120 States did not indicate consensus, then there was reason to wonder what was meant by the term consensus and at what point a consensus was reached.

7. Another problem contributing to the failure of the Conference was the approach taken towards the negotiations on the text. Some delegations, including his own, would have liked the Committee to concentrate more on ways of implementing the principle of the common heritage of mankind, but most of the time had been spent on guaranteeing access by States and on the interests of contractors, who represented only a small fraction of mankind. He hoped—and on that point he agreed with the statement by the representative of Romania—that at the next session consideration would be given to abandoning that approach.

8. The most important problems were political problems and their consequences. On the one hand there were those who already possessed wealth and wanted to retain their privileges and their pre-eminence and to acquire more at the expense of the disadvantaged. On the other hand there were the poor countries, which constituted the majority and which could no longer tolerate the continuation of the existing system. It was no mere chance that the interest groups in the Committee coincided with the level of world economic development, and the proposals submitted reflected that situation. The so-called parallel system had been proposed as a compromise and its effect would be to divide activities in the area between States and contractors on the one hand and the Enterprise on the other. The activities of the contractors would benefit only a handful of countries that had the necessary technology and means to exploit the resources, while the Enterprise was the only means of access to the zone for the overwhelming majority of mankind. In his opinion there was a striking similarity between that system and the system of separate development for the bantustans, whereby the majority of inhabitants was subjected to exploitation by the white minor-

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[1] See *Official Records of the Third United Nations Conference on the Law of the Sea,* vol. V (United Nations publication, Sales No. E.76.V.8).

ity which had kept the best parts of the country for itself. Similarly, the activities of the contractors would be those that would yield the most benefits for a minority, while those of the Enterprise would be less profitable and the results would have to be shared among the great majority of mankind. There was therefore no justice in the so-called parallel system.

9. Mr. DE SOTO (Peru) said that the fifth session, convened hastily and prematurely, without giving the delegates time to digest the documentation produced during the preceding session, had devoted a good deal of its work to procedural and methodological problems. As early as the Caracas session, his delegation had suggested that machinery must be found for stimulating the negotiating process, even including recourse to article 37 of the Conference's rules of procedure. Consideration might even be given to the desirability of fixing rigid time-limits within which decisions would have to be taken. After stating that he was well aware that methodological problems were not matters of procedure alone but were basically political matters, he turned to a discussion of the final report by the Co-Chairmen, especially the part relating to the Group of 77. The Group of 77 favoured letting the Seabed Authority itself carry on all exploration and exploitation activities in the zone, since that was the best way to apply the principle of the common heritage of mankind.

10. As the work of the Conference had progressed, it had become clear that there were profound differences in the perception of what that principle signified, but for the developing countries and for some other countries as well, a practical corollary of that principle was that the international zone would be administered jointly and that the benefit derived from it would also be common to all. States were not denied access to the zone, but that access was subordinated to the general interest and made subject to the control and decision of the international community. On the basis of that interpretation of the principle that the Authority could and should carry on the activities in question, other entities might also carry them on provided that they signed a contract with the Authority and subjected themselves to its strict, effective and permanent control. The activities of third parties, as had been emphasized by the developing countries, should be exceptional or, in the best of cases, transitory. During the subsequent debate at Geneva it had been asserted that the Group of 77 had adopted an intransigent position giving the Authority powers almost equal to those of a State, which it could exercise at its discretion and without restriction, and control without precise purposes. He felt safe in saying that the workshop paper of the Group of 77, reflected in paragraphs 7 to 12 of the report by the Co-Chairmen, demonstrated the contrasts which existed between the position adopted at Caracas and the present position. Conspicuous among the differences was the possibility of concluding contracts with third parties, after elimination of the clause under which the Authority might conclude agreements with third States if it thought that desirable. Instead, there were included certain parameters within which the Authority could exercise its discretion. It was not easy to reach agreement on the meaning of the so-called parallel system, but the liaison group of the Group of 77 had made it clear that it could not accept that term in the sense in which it appeared in the revised single negotiating text, since if that sense was accepted, the Authority would have no power to negotiate and would not be able to determine the zone in which the activities would be carried on. Another difference was that while in the text submitted at Caracas it had been established that the Authority's control should be direct, effective and permanent, without being subject to the provisions of the convention, in the document submitted at the current session the control proposed for the Authority was subject to the provisions of the convention and limited to the purpose of ensuring compliance with the convention.

11. He emphasized the importance of the position of the Group of 77 contained in paragraph 7 of the report by the Co-Chairmen, which stated that the fundamental assumption on the basis of which the Group was making its overtures in the matter of access to the Zone was that the Enterprise would be "concrete" and "financially viable". That was closely related to the system which was to regulate the activities to be carried on in the zone, but it was not part of the system, and therefore it was still necessary to negotiate the system properly so called.

12. Mr. CROSBY (Canada), referring to the statement made by the representative of Guatemala at the preceding meeting, said that it would have been realistic for the Council to include both the principal importers and the principal exporters of the minerals that could also be obtained in the international zone, whereas the indicated composition in the revised single negotiating text was not balanced. His delegation was prepared to offer its suggestions in that respect to the Chairman and to any other delegation. With regard to the functions of the Authority, he said, agreeing with a suggestion made by Norway, that an attempt might be made to arrive at a compromise concerning article 22, bearing in mind, on the one hand, the concerns of the countries in the Group of 77 and, on the other hand, the concerns of some industrialized States.

13. As to the progress of work, he said that the negotiating process in the First Committee had not proved very effective. His delegation doubted that the Committee could afford another session like the present one. It was essential, therefore, that between the present session and the next session, every delegation should give very serious thought to the possibilities of a real understanding in relation to the opinions and positions of the others; Canada would be willing to play an active part in that connexion.

14. Mr. GONZALEZ DE LEON (Mexico) said that while his Government identified itself with workshop paper No. 1, whose conciliatory position it regarded as a positive advance, it could not favour, through the provisions of the first part of the convention, setting up over the resources of the ocean floor and its subsoil any régime that permitted directly or indirectly the establishment of a monopolistic structure by a State or a group of States. For the same reason, it opposed any machinery that permitted the use of flags of convenience for indirectly obtaining concessions. What was needed was the establishment of a régime under which, without discrimination against any State, access to the resources of the marine zones would not be automatic and the Authority would have discretion to decide whether to permit such access on terms which were most desirable for the international community.

15. His Government wanted the convention to guarantee that the developing countries would effectively share in the benefits derived from the exploration and exploitation of sea-bed resources, with special care being taken to ensure that activities in the international zone did not run counter to the interests of the countries which produced the same resources in their own territory. In order to achieve those ends, the Authority should have genuine regulatory functions and possess the powers necessary to guarantee that the utilization of the resources situated in the international zone was translated into evident benefits for everyone, with control over the volume and method of exploitation and with due regard to the international régime applicable to basic commodities in all matters relating to the resources extracted in the international zone.

16. If the industrialized countries were permitted access to specified resources of the zone, it would be desirable to establish an Enterprise, belonging to the international community, which would explore and exploit the resources of the international zone on behalf of the Authority. The viability of the Enterprise was a determining part of the system and a key point in the negotiation. The Enterprise should have the necessary economic and technical resources, and to that end, the industrialized countries should give it access to the most advanced technology and should contribute towards establish-

ing an adequate financial machinery. In that connexion, he suggested as a source of financing the payment of fees for obtaining contracts of exploration and exploitation; the transfer to the Authority of a substantial part of the income obtained by contractors; a percentage of the income shared by coastal States derived from the exploration of the resources of the submarine shelf beyond 200 miles if that type of participation was approved; and, especially, the immediate investing of the Enterprise with real capacity to obtain credits as it needed them, instead of being able to obtain them in proportion to its volume of production, as was specified in the revised single negotiating text. That last point would facilitate the creation of an adequate operating fund which, once established, would make it possible to include those resources in the profit-distribution system determined by the Authority.

17. He wished to make it clear that his Government could not agree to limiting the Authority, to the extent of virtually paralysing it, by allowing recourse to revision or to appeal to legal bodies.

18. In conclusion, he said he felt that the divergence between the delegations which preferred a planned economy régime and those which preferred a market economy system could be remedied by a mixed system under which the Authority would not prevent States or private enterprises from carrying out activities but would intervene in order to preserve the common heritage of mankind. On that basis, perhaps it could be agreed that as a transitory arrangement the industrialized countries would have easy access to the resources of the sea-bed for a specified period provided that the conditions of exploitation formed part of a flexible system that could be revised after an initial period had elapsed. To that end, provision might be made for internal mechanisms of the Authority whose task would be to revise the basic conditions of exploration or exploitation.

19. Mr. WOOD (United Kingdom), referring to the final report of the Co-Chairmen on the activities of the workshop, recalled his comments at the 27th meeting and that the addendum was an extremely subjective and complex document which could be adequately understood only in the light of the statements made in the workshop and in the negotiating group. Many things could be said about it, but he would mention only two. First, he noted that from a reading of some parts of that document, such as the sixth sentence of paragraph 2 and the second sentence of paragraph 13, it might be thought that the Sea-bed Authority could, through a process of interpretation, in some way go outside the provisions of the convention on the Law of the Sea. While it was true that, whenever an international organization applied its constituent instrument, such application involved an interpretation of that instrument, the organization must, nevertheless, interpret its constituent instrument in conformity with the applicable rules of international law relating to the interpretation of treaties and it was in that sense that his delegation understood the passages concerned.

20. Secondly, he had serious doubts concerning the meaning of the first sentence of paragraph 12 of document A/CONF.62/C.1/WR.5/Add.1 and said that in any case his delegation could not accept it in the broad terms in which it was formulated.

21. With reference to the Committee's future work, he said it was generally recognized that the First Committee's mandate included questions of considerable political sensitivity and considerable technical complexity. In his view, an understanding on certain fundamental political issues had still to be reached, after which that understanding must be expressed in the form of a treaty, and both stages would take some time to complete. However, despite appearances, the First Committee had made considerable progress since the Caracas session. While it could be argued that the Second and Third Committees were more advanced in their work, it must be borne in mind that their respective mandates included points which, although interrelated, could be tackled one by one, in contrast to the situation in the First Committee, in which each of the issues had to be examined in the light of all the others. In any case, he hoped that as a result of the current session all the interested parties would have a better understanding of the essential requirements for an agreement and in that connexion he noted that the position of the States members of the European communities had already been clearly set forth at meetings of the workshop and of the General Committee.

22. Although he regretted the ideological approach reflected in some of the statements heard in the current debate, especially those in which an effort had been made to formulate rigid positions on the basis of the concept of the common heritage of mankind, which was not itself a phrase capable of precise legal definition, he thought that the debates in the First Committee had served to demonstrate that the existing differences were not irreconcilable and that it would eventually be possible to adopt a generally agreed international régime.

23. His delegation was in favour of the Conference holding a four-week session early the following year in order to conduct intensive negotiations concerning the international régime of the sea-bed, which would enable all delegations to concentrate their efforts on the difficult questions before the First Committee. In any case, he had an open mind on the method of work at the next session provided that it facilitated effective negotiations, gave an opportunity for the full participation by all delegations and was more flexible and informal than that of the current session.

24. Mr. RATINER (United States of America) associated himself with the opinions expressed by the delegation of the United Kingdom concerning the final report by the Co-Chairmen on the activities of the workshop and, specifically, reserved his position with relation to paragraph 11 of document A/CONF.62/C.1/WR.5/Add.1 and said that he could not endorse the opinion set forth in paragraph 12 of that document.

25. With regard to the statement of the Peruvian representative, who had suggested the possibility of establishing a system of time-limits for the adoption of decisions, he said that his delegation had an open mind on the question whether that would be an advisable procedure. The really important thing was to reach agreement on a text which would be lasting and acceptable. Regarding the statement by the representative of the United Republic of Tanzania to the effect that if at a given time 120 States were in favour of a specific position that was equivalent to a consensus, he observed that the fact that the Group of 77 adopted its positions by consensus did not necessarily mean that at a critical juncture those positions had unanimous support. It was his impression that the Group of 77, which constituted a political and economic interest group, would really be prepared to conduct negotiations when it perceived that a final phase, on the results of which the success or failure of the Conference would depend, had been reached. He said that the Committee in fact had about four weeks of actual work left to do and that final compromise would only be made when there was a common perception that the Committee had embarked on the first day of the last four weeks. In that connexion, he did not agree with the suggestion of the United Kingdom to the effect that more time should be allowed for consideration of the questions which the First Committee had before it. It must be realized that the decisive phase had now begun, however long it was going to last.

26. In the view of his delegation, the current session was encouraging because, in spite of the anxiety on the part of all States, including the United States, to conclude a convention as quickly as possible, no side had changed its position. That proved that the industrialized countries had gone as far as they could. In that connexion, it had been said that many States had reached the limit of their capacity to make concessions, but he did not think that was the case with respect to the Group of 77. He recalled the visits to New York of the United States Secretary of State and his proposals on the Enterprise and a review conference.

27. As to the financing of the activities of the Enterprise and

the acquisition of the necessary technology, his delegation had not elaborated that proposal in detail, first because it considered that such financing should be the responsibility of all States parties to the convention and that consultations between many countries with regard to it must still take place, especially between those which would have to contribute the most, and secondly because it had the impression that the climate prevailing in the Committee at the current session was not the most appropriate for considering the matter. He pointed out that the Secretary of State had emphasized the need for recognition of the principle of guaranteed non-discriminatory access as well as an acceptable result on articles 9, 25, 26, 27 and 28. He was troubled by the Statement of the Peruvian representative at the current meeting that financing of the Enterprise could be taken for granted.

28. His delegation was not as discouraged as others at the developments in the current session, because it considered the session simply a necessary phase of the Committee's work. The Group of 77 should know for itself what were the limits of the flexibility of the other side, which had been clearly demonstrated, at least as far as the delegation of the United States was concerned. If the Group of 77 would demonstrate greater flexibility than it had so far, it was very possible that a broadly acceptable treaty could be concluded at the next session. It was also possible that the result would be just the contrary, given the difficulties of the negotiations and of the management of the Group of 77.

29. In conclusion, he expressed the belief that if there were still deep ideological differences in the First Committee, they existed solely because there was time to talk about them and they would be rapidly overcome as soon as it was realized that the time to take decisions had come, for there was no irreconcilable ideological division between 120 countries on the one hand and a few highly industrialized countries on the other.

The meeting rose at 1.10 p.m.

36th meeting

Tuesday, 14 September 1976, at 10.50 a.m.

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

Final report by the Co-Chairmen on the activities of the workshop *(continued)* (A/CONF.62/C.1/WR.5 and Add.1)

1. Mrs. HO Li-liang (China) said that, as a result of the tremendous effort exerted by most of the participating delegations, a great deal of progress had been made. The Group of 77 in particular, and the developing countries in general, had adhered to principle and had provided the momentum for the advance of the First Committee's work.

2. There had, however, been obstacles created by one or two super-Powers, whose positions were unjustified and unacceptable. Consequently, in order to obtain positive results on the question of the régime of the international sea-bed area, it was essential to observe the fundamental principle that the interests of the developing countries, including the land-locked and geographically disadvantaged countries, must be taken into account. The principle that the international sea-bed area and its resources were the common heritage of mankind must be adhered to and put into practice. In other words, the area should not be divided, and no country or individual could claim sovereignty over the area and the resources therein. Activities in the area should be conducted under the leadership and control of the International Sea-bed Authority, which would exercise all rights on behalf of the whole of mankind.

3. In that connexion, her delegation deemed it necessary to stipulate that, while all activities within the area might be conducted through modalities deemed appropriate by the Authority, the latter's decision-making power and its right to effective and over-all control over all activities should be maintained. The super-Powers' proposition for a parallel system of exploitation and their unjustified demand for automaticity of entry into contracts with States parties or private companies must be rejected.

4. The experience gained at the current session testified to the fact that the premature consideration of specific or technical questions was not conducive to progress. For that reason, at the next session important questions of principle should be allotted more time and considered on a priority basis. In addition, all representatives should have equal rights to participate in negotiations and discussions.

5. Mr. SEVILLA-BORJA (Ecuador) said that the lack of sufficient time at the current session, which had been prematurely and hastily convened, had been the main factor preventing the achievement of more tangible results. Nevertheless, the Group of 77 had assumed the historical responsibility imposed on it by circumstances, submitting working papers on substantive aspects and advancing suggestions for correcting the unsatisfactory method of work adopted at the preceding session. Unfortunately, it had not been possible to deal immediately with the important subject considered by the Group of 77 because one delegation—the very one which had been most anxious to have the present session convened as a matter of urgency—had stated that its members had not yet been able to agree on article 27 of part I of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1).[1]

6. Accordingly, the Group of 77 had applied itself to a study of systems of exploitation, which eventually had led to a discussion of substantive aspects. That discussion had clearly shown that part I of the revised single negotiating text was not a suitable basis for a compromise solution. Evidence of that was the fact that three texts, contained in workshop papers Nos. 1, 2 and 3, which departed considerably from the revised single text had been submitted. Subsequently, when an attempt had been made to negotiate on the basis of those texts, the same delegation which had stated that its members had been unable to agree on article 27 had demanded that the grounds on which the Authority might deny an applicant access to the area should be spelt out in detail. The Co-Chairmen had accordingly submitted proposals designed to do that, but they had not been accepted by the delegation in question. The delegation of Ecuador wished to emphasize, with regard to the unjustified claim that the Authority

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[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8).