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105th Plenary meeting

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the exploitation of the exclusive economic zone, with a view to clarifying the concept. He hoped the objections to that proposal would be withdrawn.

83. His delegation disagreed fundamentally with certain aspects of the formulations contained in document NG4/9/Rev.2 and, in particular, it had reservations regarding the right of land-locked States to the living resources of the exclusive economic zones of coastal States, in which coastal States exercised sovereignty. His delegation therefore had difficulty in accepting paragraph 3 of article 69 and paragraph 4 of article 70, as proposed in that document. The surplus principle must be respected.

84. His delegation regretted that worth-while results had not been achieved by negotiating group 6. It continued to support the Irish proposal, which it regarded as viable in that it permitted a harmonization of the interests of coastal States with those of the international community. It was essential that the right of coastal States to exploit the continental shelf to its limit should be recognized.

85. His delegation considered that the results achieved in negotiating groups 4 and 6 represented part of a fundamental negotiating package. It could not accept any formula proposed by negotiating group 4 if a satisfactory formula was not produced in negotiating group 6.

Mr. Amerasinghe resumed the Chair.

86. Mr. RUIVO (Portugal) said that the position of his delegation continued to be that the object of the negotiations which had taken place during the Conference was to reach a compromise solution based on an over-all package deal which in turn would consist of a number of package deals on key issues. From that point of view, his delegation believed that progress had been made during the current session, and he therefore hoped that the results achieved would be trans-

mitted to the next session of the Conference as a basis for further negotiation. The formula contained in document NG4/9/Rev.2 represented an improvement on the informal composite negotiating text, and his delegation was prepared to accept it with certain amendments. In particular, the relative level of economic development as a factor in negotiations on access to the exclusive economic zone required more precise definition. His delegation was in favour of the references to the nutritional needs of the populations of the respective States and to the need to avoid effects detrimental to the fishing industries of coastal States, but it was concerned at the references in the proposed wording of articles 69 and 70 to the subregion or the region, without any accompanying clarification of those concepts. His delegation considered that the criterion which should be applied in identifying the region or subregion should be based on objective considerations such as geographical proximity.

87. His delegation was satisfied with the formula proposed by the Chairman of negotiating group 5 (NG5/16), which represented a realistic solution that took account of the need to conserve resources and to manage them in a rational manner, and would also help indirectly to safeguard access, without discrimination, to surpluses. He regretted that his delegation's informal suggestion regarding article 61 and a new article 67 *bis* (C.2/Informal Meeting/26), which had been designed to clarify the criterion of maximum allowable catch, had not been adopted.

88. Mr. ZEGERS (Chile) said that his delegation considered that the results achieved by negotiating groups 4 and 5 represented a good basis for negotiations with a view to reaching a compromise. The difficulty with regard to the concept of rights of land-locked and geographically disadvantaged States could be avoided.

The meeting rose at 11.45 p.m.

105th meeting

Friday, 19 May 1978, at 10.15 a.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

REPORT OF THE SECOND COMMITTEE (concluded)

1. The PRESIDENT said that he wished to correct any false impression that might have been created by an observation from the Chair during the statement by the representative of Poland at the previous meeting. No discourtesy had been intended. He had intervened merely to expedite the proceedings and to avoid the possibility of a succession of points of order.

2. Mr. ZEGERS (Chile) said that his delegation fully supported the observations made at the 102nd meeting by Mr. Castañeda, Chairman of the group of coastal States. In that connexion, it was certain that the reports of negotiating groups 5 and 7 would be presented in due course by the President of the Conference, and that the part of the report of the Chairman of the Second Committee (100th meeting)

which related to the work of negotiating group 6 would be reflected in the documents of the Conference.

3. The compromise suggestions by the Chairman of negotiating group 4 (NG4/9/Rev.2)¹ provided a sound basis for negotiation and might represent the nucleus of a possible compromise on the establishment, for land-locked and geographically disadvantaged States, of a right of participation on an equitable basis in the fishing surpluses of a region or subregion.

4. He believed that the problem raised by the word "rights" could be solved by adopting the suggestion of the representative of Peru to delete the word "the" in the English text.

5. Turning to the proposals contained in the report of negotiating group 5 (NG5/17)², he said that they seemed to offer a good basis for negotiation in so far as they provided that disputes with regard to fisheries within the 200-mile exclusive economic zone should not be subject to compulsory settlement.

¹*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 93.

²*Ibid.*, p. 117.

6. In regard to the work of negotiating group 7 on delimitation (NG7/21)³, there appeared to be a consensus on the delimitation of the territorial sea between adjacent and opposite States, but no consensus on the delimitation of the exclusive economic zone on the continental shelf between such States, since neither the informal composite negotiating text⁴ nor the formulations suggested in the group had commanded wide support. His delegation felt that the final solution should be based on the principle of equidistance and that provision should be made for compulsory settlement of disputes on delimitation.

7. The PRESIDENT confirmed that the reports of negotiating groups 5 and 7 would be presented by him when the plenary took up part XV of the negotiating text. He said that there was difficulty over the status to be given to the reports of the chairmen of the committees and the chairmen of the negotiating groups, since the Conference was considering at formal meetings reports which had not been formally approved. He therefore proposed, without in any way wishing to prejudge the status of the reports, that they should be reproduced under the following title "Reports of the Committees and negotiating groups on negotiations at the seventh session, contained in a single document both for the purposes of record and for the convenience of delegations." That document would be circulated to participants in the Conference with the date and the original language specified.

It was so decided.

8. Mr. YANKOV (Bulgaria), speaking as Chairman of the Third Committee, drew attention to a further category of documents, namely the MP series. There had been a feeling in the Third Committee that it would be a pity to lose sight of those documents. He suggested that they might be issued for further consideration by the Conference, without changing their informal status.

9. The PRESIDENT suggested that the texts of reports presented by the chairmen of committees and negotiating groups should be printed in full and that any working paper containing important points should also be printed.

It was so decided.

10. Mr. BRENNAN (Australia) asked whether the above documents would be the only ones to be produced by the presidential team.

11. The PRESIDENT said that no decision on the documents to be issued could be reached by the presidential team until the Conference had completed its work.

12. Mr. AL-NIMER (Bahrain) said that, in general, document NG4/9/Rev.2 provided a good basis for the revision of the negotiating text in order to achieve a fair balance between the interests of coastal States and those of the land-locked and geographically disadvantaged States.

13. The negotiating text could be said, in general, to favour coastal States. Article 61, for example, authorized the coastal State to determine the allowable catch of the living resources in its exclusive economic zone; paragraph 2 of article 62 gave the coastal State the right to determine the access, if any, of other States to the surplus of the allowable catch; and paragraph 4 of the same article conferred on the coastal State the right to control fishing activities in the exclusive economic zone. It was therefore important to redress the balance; the proposed amendment to paragraph 2 of article 62 was particularly useful in that connexion and should be included in a revised version of the negotiating text.

14. Turning to paragraph 2 of article 70, which was of great importance since it established the conditions for participation in the exploitation of the living resources of the exclusive economic zone, he said that the compromise suggestions in

document NG4/9/Rev.2 were not equitable and would give rise to serious complications in the future. That paragraph should most certainly be modified and it would also be desirable to reintroduce the term "geographically disadvantaged States" in any future text. He supported the views of the representative of the United Arab Emirates that the economic situation of a country should be taken into account when determining the right of access to surplus fishing resources.

15. Mr. BAKER (Israel) said he hoped that the various comments, reservations and suggestions made during the informal deliberations of the Second Committee would be taken into account, and, where necessary, transmitted to the Drafting Committee. In particular, his delegation could not accept the arbitrary, artificial and unwarranted distinctions between various types of straits which derived from the present structure and language of articles 35, 37, 38 and 45 of the negotiating text. He would have liked to draw attention to a number of difficulties, especially in part IX of the negotiating text, on enclosed and semi-enclosed seas, a matter in some respects related to straits. His delegation had in fact submitted proposals on articles 33, 55, 109 and 110 which, he hoped, would be taken into account. The question of historic waters, which had been raised by a previous speaker, had given rise to some reservations and should be discussed further. He also agreed that the term "States with special geographical characteristics" needed to be more clearly defined.

16. Mr. KOH (Singapore) said that the compromise suggestions by the Chairman of negotiating group 4 did not satisfy his delegation entirely, firstly because they did not employ the term "geographically disadvantaged States;" secondly because, although the coverage of paragraph 2 of article 70 had been widened, it was still inadequate and some of the States concerned would fall outside the coverage; and thirdly because his delegation had certain objections to paragraph 4 of article 69 and paragraph 5 of article 70.

17. In spite of those reservations, he still believed that the suggestions by the Chairman of negotiating group 4 were better than the corresponding formulations in the negotiating text and offered a substantially improved prospect of reaching a consensus on that issue.

18. He shared the disappointment of the representatives of the coastal States in general, and of the wide-margin States in particular, that no solution had been achieved in negotiating group 6. The issue considered by that group was one of the core issues, and a satisfactory solution to it must be found if the Conference was to adopt a convention. He was convinced, that under the able leadership of the Chairman of the Second Committee and with goodwill from all sides, it would soon be possible to find a solution that was fair to the wide-margin States and to the rest of the international community. His delegation would participate in further negotiations with goodwill and in a constructive spirit.

19. Lastly, he wished to pay a tribute to the Chairmen of negotiating groups 4 and 5 for the excellent work which they had done at the session. If nothing else had been achieved at the present session, their work alone would have made the session a tremendous success.

20. Mr. GORI (Colombia) said that some pessimism had been expressed in regard to the work of negotiating group 7, but there were indications that an understanding might possibly be reached. There was certainly a consensus on the delimitation of the territorial sea (article 15 of the negotiating text), a matter which was governed by a substantive rule of law. Opinions were divided, however, in regard to the delimitation of the exclusive economic zone and the continental shelf, some delegations preferring delimitation in accordance with equitable principles and others supporting the equidistance solution. There was an important difference of princi-

³*Ibid.*, p. 124.

⁴*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

ple between the two approaches, and his delegation had no doubt which was the right one. It was essential to adopt a legal rule on the basis of which clear decisions could be made. The equidistance principle provided such a rule and his delegation was formally in favour of its adoption, with provisions for compulsory implementation if necessary. The matter was set out in detail in the proposal which his delegation had co-sponsored (NG7/2).

21. Mr. DIOP (Senegal), referring to the work of negotiating group 4, said that his delegation was opposed to the exclusion of the concept of surpluses from the convention. The fears expressed by some African countries were not justified, since saturation of surpluses did not occur in Africa. The interests of African land-locked countries were protected by the provisions of paragraph 5 of article 69. In his delegation's view, the definition of countries with special geographical characteristics, as contained in the proposals by the Chairman of negotiating group 4, was vague and should be clarified.

22. The purpose of the uncontroversial amendment submitted by Senegal to subparagraph 4 (a) of article 62 (C.2/Informal Meeting/37) was to prevent the saturation of a particular sector and to allow countries sufficient latitude to orient their contributions to a sector of their choice.

23. Turning to the report of negotiating group 5, he said that his delegation had some difficulty in accepting a rule calling for compulsory settlement of disputes concerning the exercise of a coastal State's sovereign rights, since such a provision was found to give rise to abuse. He therefore supported the compromise text contained in document NG5/15, although he was prepared to consider other proposals, including that put forward by the United States (NG5/11).

24. Although no compromise had been reached in negotiating group 7, progress could be made if the concept of equidistance as the exclusive or privileged criterion for delimitation was abandoned.

25. Mr. SANTISO-GÁLVEZ (Guatemala) said that his delegation fully supported the views expressed on the previous day by the representative of Mexico on behalf of the group of coastal States with regard to the work of negotiating group 4. It also endorsed the views expressed by the representatives of Peru and Honduras (103rd meeting), as well as Uruguay (104th meeting).

26. Mr. ADDAE (Ghana) said that the results achieved by negotiating groups 4 and 5 constituted an acceptable basis for further negotiation. His delegation regretted, however, that there had been a lack of any appreciable progress in negotiating group 6. In its view, the régime of the continental shelf should have been subsumed under that of the exclusive economic zone. It was also essential that the outer limit of the continental shelf should not exceed 200 nautical miles if activities on the sea-bed beyond the limits of national jurisdiction were to be regulated for the benefit of mankind as a whole, in accordance with the concept of the common heritage of mankind. In that respect, article 76 of the negotiating text did not reflect the expectations of most delegations concerning the establishment of a new international economic order.

27. Of the two proposals concerning delimitation of the continental shelf put forward in negotiating group 6, the Soviet proposal (C.2/Informal Meeting/14) was more acceptable to the Ghanaian delegation than the Irish formula (see A/CONF.62/C.2/L.98), but required further study. Ghana did not favour the proposed linkage of the issue of the delimitation of the continental shelf with the question of access to the living resources of the exclusive economic zone, since the prospects for consensus on such a linkage were not good.

28. Mr. CLINGAN (United States of America) said that the compromise suggestions put forward by the Chairman of

negotiating group 4 increased the likelihood of consensus and should be incorporated in any revision of the negotiating text. It was regrettable that no consensus had emerged regarding the definition of the continental margin beyond 200 miles or the related question of revenue sharing, but a package which accommodated the interests of all States was emerging nevertheless. The elements of that package were as follows: first, the Irish formula, which was legally defensible, scientifically sound and politically realistic and avoided the dangers of a distance criterion unrelated to natural features; secondly, the sharing of revenue from the exploitation of mineral resources beyond 200 miles, commencing five years after commercial exploitation had begun and based on the value of production at the site, with the rate increasing to an agreed maximum; and thirdly, some formula for adjusting the distribution of benefits that would take into account the contribution made by developing countries which had exploited the resources of the margin beyond 200 miles.

29. His delegation was opposed to the Bulgarian proposal for the preparation of regional maps (103rd meeting), since it would seriously delay the work of the Conference and interfere with the momentum of negotiations, as well as duplicating the work already done by experts from the Intergovernmental Oceanographic Commission and the International Hydrographic Organization in reviewing the present secretariat study.

30. The United States supported the report of the Chairman of negotiating group 6, including the amendments to three non-hard-core issues, which should be included in any revision of the negotiating text. It was opposed to amendments on which it had not made specific comments, for the reasons expressed at previous sessions.

31. The discussions on article 55 in the Second Committee had demonstrated that there was strong support for the package contained in the negotiating text regarding the exclusive economic zone, and there was also a recognition of the careful balance which it had struck. Article 89 provided that no State might validly purport to subject any part of the high seas to its sovereignty and, according to the terms of paragraph 2 of article 58, articles 88 to 115 applied to the exclusive economic zone, in so far as they were not incompatible with part V. Nothing in part V was in fact incompatible with article 89. At the same time, it was clear that the sovereign rights and jurisdiction of the coastal State were not prejudiced. It was not the intention of the United States, in supporting the Soviet proposal concerning the amendment of paragraph 2 of article 55 (C.2/Informal Meeting/7), to upset the present balance. The inclusion of a no-sovereignty clause in that paragraph would merely give political prominence to a principle on which there was broad agreement and would not change the legal meaning of the provisions of the negotiating text.

32. Mr. GOUK (Democratic People's Republic of Korea) said that articles 17, 29 and 30 of the negotiating text should be amended in order to take into account the view expressed by a number of countries that foreign warships should only pass through the territorial sea of a coastal State with the prior permission of, or with prior notification to, that State. His delegation opposed the idea that disputes relating to the exercise of the sovereign rights and jurisdiction of a coastal State should be submitted to compulsory adjudication, and considered that the relevant articles, in particular article 296, should be revised. In addition account should be taken, in paragraph 2 of article 58, of the Peruvian proposal that foreign warships and military aircraft should refrain from engaging in manoeuvres or using weapons while passing through the exclusive economic zone of a coastal State (C.2/Informal Meeting/9).

33. Mr. DE LACHARRIÈRE (France) said that the views of the members of the European Economic Community on

the results achieved by negotiating group 4 had already been expressed by the representative of Denmark (103rd meeting). Those results, however, should not be seen in isolation but should be considered in conjunction with the equally important issue of the definition of the outer limit of the continental shelf. At the present stage, the only proposal capable of leading to an equitable and scientifically justified solution to the problem of defining the outer limit of the continental margin was the Irish formula. On the question of the legal régime of the exclusive economic zone, the French delegation supported the informal proposal put forward by the Soviet delegation.

34. On the question of islands, the French delegation fully supported the Japanese proposal to delete paragraph 3 of article 121 (C.2/Informal Meeting/27). The Belgian suggestion to amend article 25 relating to archipelagos (C.2/Informal Meeting/15) had met with broad support and should therefore be included in any revision of the informal composite negotiating text.

35. The French delegation noted with satisfaction that it had been possible to arrive at a compromise in negotiating group 5, but regretted that negotiating group 7 had not been able to draft provisions better than those now contained in the negotiating text.

36. Mr. VELLA (Malta) said that all the suggestions which had been made with regard to the definition of the continental shelf should be taken into account in further negotiations. Some of those suggestions were aimed not only at precision but also at providing safeguards against further shrinkage of the common heritage of mankind.

37. Although the question of delimitation covered in articles 74 and 83 was one of the most intractable problems before the Conference, possible ways of achieving a solution had been suggested and negotiations should continue at the next session on the establishment of criteria for delimitation and settlement of disputes on delimitation. The discussion so far had shown that the present provisions of the informal composite negotiating text did not offer a basis for a compromise solution.

38. With regard to the régime of islands, he said that his delegation recognized the difficulty of defining maritime spaces because of the presence of islands, but it could not support the suggestions which had been made on the subject of islands unless a clear distinction was drawn between island States and other islands. The proposal put forward with regard to enclosed and semi-enclosed seas deserved further consideration and enjoyed his delegation's support, since it would be difficult to exploit the resources of such seas as the Mediterranean without full co-operation between bordering States.

39. Mr. DORJI (Bhutan) said that a number of coastal states had referred to the direct linkage of the issues considered by negotiating groups 4 and 6, and had stated that the concept of such a linkage had originated with certain land-locked and geographically disadvantaged States. He wished to point out, however, that neither his delegation nor the group of land-locked and geographically disadvantaged States had proposed any such direct linkage, although the issues discussed by the two negotiating groups were inter-related to the extent that they formed part of an over-all package.

40. The texts which had resulted from the discussion in negotiating groups 4, 5 and 6 came close to representing a consensus and could therefore be accepted as a basis for further negotiations. In particular, the Irish formula had never been rejected and should therefore be given further consideration. His delegation was disappointed with the lack of progress in negotiating group 7, although it could accept the compromise put forward as a basis for further negotiation. That acceptance should not, however, be construed to

mean that it agreed with the conciliation formula for other types of dispute.

41. Mr. DROUSSIOTIS (Cyprus) said that his delegation endorsed the report of the Chairman of negotiating group 7. The report showed, in particular, that none of the formulations put forward for articles 74 and 83 had received widespread support, that there was no consensus on the present formulation of those articles in the negotiating text, and that the rules of delimitation and settlement of disputes should not be separated.

42. The proposals contained in document NG7/11 contained certain positive elements, including recognition of the principle of equidistance in articles 74 and 83 and the establishment of a close link between delimitation and settlement of disputes which would, in his delegation's view, ultimately constitute the basis for an acceptable compromise.

43. The delegation of Cyprus had consistently expressed the view that no distinction whatsoever should be made between insular and continental territories with regard to entitlement to zones of maritime jurisdiction. It also had serious reservations of principle as to whether the concept of enclosed and semi-enclosed seas should be included in the convention, since its inclusion would lead to further fragmentation. It recognized, however, that there was a need for co-operation among States in the same region. Cyprus was in favour of freedom of navigation and semi-enclosed and enclosed seas and therefore supported the Yugoslav suggestion concerning article 36 (C.2/Informal Meeting/2).

44. Mr. MARSIT (Tunisia) said that the proposals put forward by negotiating group 4 were worthy of support, although his delegation had some reservations regarding the terminology and phraseology which had been used. He supported the views expressed at the 104th meeting by the representative of Egypt concerning freedom of passage through straits used for international navigation. It also endorsed the view that the continental shelf should not extend beyond 200 miles and it considered that consensus could be reached on a provision to that effect. Tunisia was ready to participate in all efforts to enable negotiating group 7 to reach an acceptable compromise which would take the interests of the various parties fully into account and would lead to the establishment of legal principles that were not subject to misinterpretation.

45. Mr. AL ATTRACHE (Syrian Arab Republic) said that his delegation could support the proposals put forward by negotiating group 4, although they did not fully reflect the position of Syria. The conclusions reached by negotiating group 5 could also form the basis for a compromise formula. Syria supported the proposal for compulsory settlement of disputes concerning the exclusive economic zone, since such settlement offered an element of stability and would be in accordance with legal principles.

46. The Syrian delegation supported the position taken by the Group of 77 and the group of land-locked and geographically disadvantaged States concerning the exclusive economic zone and considered that the continental shelf and the exclusive economic zone should have the same status. The outer limit of the continental shelf should not extend beyond 200 miles.

47. His delegation did not accept the concept of equidistance with regard to questions of delimitation which, in its view, should be settled on the basis of the principle of equity and in the light of local geographical, social and economic conditions.

48. It would not be advisable to link the conclusions of negotiating groups 4 and 6, since the discussions in those groups had shown that points of divergence were very wide. The results achieved by negotiating group 4 must be respected and should form the basis of further negotiations.

49. Mr. MONNIER (Switzerland) said that the considerable progress made in negotiating groups 4 and 5 was a source of satisfaction to his delegation. The compromise provisions suggested by the Chairman of negotiating group 4 marked a substantial improvement on the corresponding provisions in the informal composite negotiating text. It was regrettable, however, that the term "geographically disadvantaged States" had not been used in the suggested compromise provisions and that, in paragraph 3 of the proposed article 69, a distinction was drawn between developed and developing land-locked States. In view of the safeguard clause provided for in paragraph 4 of article 69, such a distinction was unjust.

50. It was regrettable that no progress had been made in negotiating group 6. His delegation regarded as inappropriate the linkage advocated by several delegations between insertion in the future revised text of the positive results of the discussions in negotiating groups 4 and 5 and acceptance by the Conference of a particular method for delimitation of the continental shelf. If there was to be any linkage, it should be between the adoption of a precise criterion for delimitation and the establishment of a more satisfactory system for the sharing of the benefits of the resources of the continental shelf beyond 200 miles than that provided for in the existing text.

51. Mr. ADIO (Nigeria) said that the new formulations for articles 69 and 70 contained in the report of the Chairman of negotiating group 4 provided a good basis for further negotiations.

52. Although he could accept the report of negotiating group 5 as a good basis for further negotiations also, he would prefer texts which did not provide for compulsory recourse to adjudication.

53. Turning to the results of negotiating group 6, he said that in real quantitative terms the Irish formula condoned boundless extension of the continental shelf whereas the Soviet proposal authorized a distance of no more than 300 miles. In effect, the Irish proposal sought to annex what should be part of the high seas as part of the continental shelf, whereas under the Soviet proposal that area would be preserved for continued exploitation by long-distance factory fishing fleets. Both formulae were unacceptable to his delegation. A distance of 200 miles appeared to be the most equitable.

54. In conclusion, he said that further work should be undertaken on the issues covered by negotiating group 7. As a package, the results of the negotiations that had taken place in negotiating groups 4, 5, 6 and 7 were satisfactory.

55. Mr. EIRIKSSON (Iceland) said that Iceland's economy was overwhelmingly dependent on fisheries. It was therefore particularly important that the Icelandic position on fishery matters should not be misinterpreted as a result of application of the rule of silence under which the Conference was working. For the reasons it had expressed in negotiating group 5, his delegation must reserve its position on the formulations currently under consideration with respect to disputes relating to fisheries in the exclusive economic zone, in particular with respect to the exercise by the coastal State of its sovereign rights in the zone.

56. Mrs. PULIDO SANTANA (Venezuela) said that her delegation had not had time to examine the documents produced by negotiating groups 4 and 5 with the attention they deserved. A preliminary examination, however, seemed to show that the results achieved by those groups were satisfactory and could constitute a basis for further negotiations.

57. Venezuela reserved its position concerning the articles that had been discussed in negotiating group 7.

58. In conclusion, she said that her delegation supported

the informal suggestion made by the Japanese delegation for the deletion of paragraph 3 of article 121.

59. Miss SKINNER (Ireland) said that her delegation supported the delegations of Iraq, Turkey and Cyprus which had referred to the need to give time at the forthcoming session for a discussion on article 121. She could not agree with delegations which had claimed that the negotiations on the provisions of that article had been exhaustive. The article had implications for other provisions in the convention, including those dealing with delimitation, which also remained to be satisfactorily resolved by further negotiation.

60. Her delegation was opposed to the proposal by Japan for the deletion of paragraph 3 of article 121. It would explain its position on that article at the appropriate time.

61. The PRESIDENT said that the Conference had completed its discussion of Second Committee matters. It should, however, take a decision on the proposal submitted by the representative of Bulgaria (103rd meeting), and supported by the representatives of Colombia, Iraq, Poland and Yugoslavia, for the preparation by the Intergovernmental Oceanographic Commission, with the assistance of other competent international organizations, of larger-scale maps of the oceans of the world, in which account would be taken of the proposal made in article 76 of the informal composite negotiating text, the proposal by the Arab group (NG6/2), the Irish formula and the USSR proposal. In the past, it had been customary for any such requests to be adopted by consensus. He had held consultations on the matter and found that opinions on the proposal were divided. He suggested, therefore, that the Secretariat should be requested to record on the existing map the effect of the application of the USSR proposal, and to make inquiries regarding the financial, technical and administrative implications of the preparation of the proposed new maps.

62. Mr. YANKOV (Bulgaria) said that a number of other delegations, including those of Portugal and Cameroon, had also supported the proposal made by his delegation.

63. His delegation appreciated the small-scale maps that had been produced following a suggestion made by the representative of Colombia at the previous session. After studying them, however, it had come to the conclusion that all the implications of the various formulae could not be adequately shown on a small-scale map. He wished to state categorically that the sole purpose of his delegation in making the proposal was to facilitate achievement of the aims of the Conference: it was certainly not its intention to delay the Conference's work or to involve the United Nations and other organizations in unjustified expenditure. It did consider, however, that small-scale maps did not provide a comprehensive and clear picture of the real scope and implications of the various formulae that had been presented to the Conference. A map on the scale of 1:10,000,000 prepared by a competent organization, such as the Intergovernmental Oceanographic Commission, would provide the necessary background information on which to base a decision. His delegation's preoccupations in the matter would not be met by adding the implications of new proposals to the small-scale maps. It was difficult to understand why certain delegations should object to a proposal which, if adopted, would enable the Conference to take a decision in full knowledge of the facts. It was necessary to have reliable data in order to be able to decide which of the formulae was the best.

64. The PRESIDENT said that he took it that the representative of Bulgaria agreed that in the first instance the secretariat would be requested to show the implications of the Soviet proposal on the existing map, and in the meantime to request the Commission to examine all the implications of adoption of the Bulgarian proposal.

65. Mr. YANKOV (Bulgaria) said that his delegation's proposal was that work should be started on preparation of

larger-scale maps. The financial, technical and administrative implications of such work would, of course, have to be taken into consideration, but the proposal was that the maps should be produced.

66. The PRESIDENT said that preparation of the larger-scale maps had not been ruled out. Nevertheless, the first step must be to examine the financial and technical implications of the proposal.

67. Mr. GARDINER (Ireland) said that, in general, he agreed that the proposal should be dealt with in the manner suggested by the President. His delegation viewed with very deep concern the implications of the proposal, which would not facilitate achievement of a compromise on the vital hard-core issue of the definition of the continental shelf.

68. Mr. KOZYREV (Union of Soviet Socialist Republics) fully supported the proposal made by the representative of Bulgaria. He failed to understand why certain delegations were opposed to the preparation of accurate maps.

69. The PRESIDENT suggested that discussion of the question be suspended.

REPORT OF THE FIRST COMMITTEE (*concluded*)*

70. The PRESIDENT said that he understood that the Group of 77 did not wish to discuss the substance of the reports of the First Committee and its negotiating groups.

71. Mr. GHELLALI (Libyan Arab Jamahiriya) said that it was the understanding of his delegation that the reports produced by the chairmen of negotiating groups 1, 2 and 3 could only be considered as representing their own personal points of view on what might have appeared to them as the trends of the negotiations. There had not been sufficient time to have a proper discussion on the reports, so there was no question of accepting or rejecting their contents. He recalled that the Chairman of the First Committee, in his report to the plenary, had said that the decision of the Group of 77 not to raise any objection to the reports of negotiating groups 1, 2 and 3 providing or constituting a basis for negotiations at the next session of the Conference was without prejudice to the informal composite negotiating text, the proposals of the Group of 77 and other individual proposals of delegations. In the opinion of his delegation, that meant that the negotiating text would constitute the principal basis for further negotiations at the next session. The reports produced by the chairmen of negotiating groups 1, 2 and 3—which could not be said to have won widespread support—could not be considered for the time being, in his delegation's opinion, as a basis for any revision of part XI of the informal composite negotiating text. Acceptance of them as the sole basis for further negotiations would be tantamount to acceptance of indirect revision of the informal composite negotiating text.

72. His delegation wished to suggest that, in future, arrangements should be made for the First Committee to hold more formal meetings, because the lack of such meetings would create many gaps in the knowledge of the future generation about the work which was done in the First Committee and the evolution of the principle of the sea-bed as a common heritage of mankind.

73. In conclusion, he said that his delegation endorsed the comments made by the Chairman of the First Committee concerning the inadequacy of the translation services. Because of that inadequacy, the Arabic-speaking delegations had not been able to express their views as they would have wished. The Arabic language had not been given sufficient attention, particularly in small meetings.

74. The PRESIDENT said that every effort would be made to ensure that the Arabic language was treated on an equal footing with the other languages of the Conference.

75. He reminded the Conference that, in his report to the Conference at its 101st plenary meeting, the Chairman of the First Committee had said that the Group of 77, in spite of its inability to have an in-depth review of the package in the short time available, had nevertheless endeavoured to consider the package in a preliminary way, and in a spirit of co-operation had decided to raise no objection to the reports of negotiating groups 1, 2 and 3 providing or constituting a basis for negotiations at the next session of the Conference. That was "without prejudice", the Group of 77 had said, "to the informal composite negotiating text, the proposals of the Group of 77 and other individual proposals of delegations". That approach had been accepted by the First Committee. He understood that to mean that the results of the negotiations of the seventh session, as reported to the plenary Conference by the chairmen of the committees and negotiating groups, would be collated in one conference document for use at future sessions. He suggested that, if that procedure was acceptable, there was no need to proceed further with discussion of First Committee matters.

It was so decided.

76. Mr. BENDIFALLAH (Algeria) said that the status of the proposals originating from the various negotiating groups should be made quite clear for the purposes of future negotiations. However important the proposals made at the current session might be, they should be reflected only in working papers, which should in no circumstances be placed on an equal footing with the informal composite negotiating text—the sole and continuing basis for any future negotiations. Any proposals made at the current session could serve only as guidelines for certain groups or certain delegations.

77. Mr. RAOELINA (Madagascar) supported the comments made by the representative of the Libyan Arab Jamahiriya. The First Committee had not had sufficient time properly to examine the reports of the chairmen of negotiating groups 1, 2 and 3. In the view of his delegation, therefore, the informal composite negotiating text and the documents prepared by negotiating groups 1, 2 and 3 should constitute the basic documents for the next session.

78. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the package of articles elaborated in the First Committee represented a compromise which the Conference had long been endeavouring to achieve and could form the basis for further negotiations. In that respect, his delegation supported the decision by the Group of 77.

79. The package was not altogether free from defects; but, as there was obviously a general desire not to discuss the substance of the provisions in the package, his delegation would not mention the difficulties it still had with those provisions. The compromise versions of articles drafted in the negotiating groups on First Committee issues enjoyed such a high degree of support that there was undoubtedly a prospect of reaching a consensus on them.

REPORTS OF NEGOTIATING GROUPS 5 AND 7

80. The PRESIDENT drew attention to the reports submitted by the chairmen of negotiating groups 5 and 7 (NG5/17 and NG7/21). In the area of dispute settlement, there would appear to be some issues that still needed to be resolved. Two of those issues had been selected as hard-core issues and dealt with in negotiating groups 5 and 7. Negotiating group 5 had considered the question of disputes relating to the exercise of sovereign rights by coastal States in the exclusive economic zone. It had arrived at a compromise formula which, according to the report by its chairman, had enjoyed substantial support amounting to a conditional consensus. The principal issue dealt with by the group was reflected in

*Resumed from 101st meeting.

paragraph 3 of the new draft of article 296, which provided for the submission to a compulsory conciliation procedure of any of the categories of disputes referred to in that article.

81. Negotiating group 7 had considered disputes concerning sea-boundary delimitations between adjacent and opposite States; although it had not reached a compromise, it had held a full exchange of views. According to the Chairman of the group, sub-group on the settlement-of-disputes aspects of that question had prepared a paper on possible approaches to a compromise solution. Undoubtedly, any provisions for the settlement of disputes must necessarily be dependent on the substantive parts of articles 74 and 83. That did not, however, preclude the Conference from examining the alternative compromise formulae that had resulted from the work of that group.

82. In the circumstances, delegations should address themselves to the specific formulations in the compromise text of the Chairman of negotiating group 5. On the subject matter of negotiating group 7, delegations should address themselves to the specific concept in the settlement-of-disputes provision within the mandate of negotiating group 7 in relation to subparagraph 1 *a* of article 297 of the informal composite negotiating text.

83. Mr. NAKAGAWA (Japan) said that his delegation wished to state its position on the compromise formula relating to paragraph 4 of article 296 of the informal composite negotiating text; that paragraph was now incorporated as paragraph 3 in the proposed new draft article 296. His delegation had consistently advocated the principle of the judicial settlement of all disputes arising under the convention, in particular fisheries disputes in the exclusive economic zone. It had nevertheless expressed a willingness to accept certain exceptions to that principle with a view to contributing to a compromise. If the compromise formula had provided for even a limited application of the principle of judicial settlement for that category of disputes, his delegation would certainly have accepted it. Unfortunately, there was a serious lacuna in the compromise formula with respect to that principle, and his delegation was obliged to enter a strong reservation concerning the proposed new text for paragraph 3 of article 296.

84. On the question of the rearrangement of other paragraphs of article 296 and, in particular, paragraph 1 of the new text of article 296, his delegation thought some reference to the exclusive economic zone should be made in the introduction to that paragraph, since for the past two or three sessions the Conference had been working on that introduction on the implicit understanding that it related to disputes arising in connexion with the exclusive economic zone. In order to make that point clear, therefore, his delegation wished to suggest that the words "part V of" should be inserted between "provided for in" and "the present Convention" in paragraph 1 of article 296. His delegation felt there was a danger that, under the present text of the introduction, disputes relating to the exercise of the jurisdiction of a coastal State in the high seas over its own ships might be excluded from the traditional settlement procedures, which was certainly not the intention of the paragraph. Even if the Conference retained the wording of the introduction contained in document NG5/16, the paragraph should, in the opinion of his delegation, be interpreted in the manner he had described.

85. The present wording of subparagraph 1 (*a*) of article 297 of the informal composite negotiating text was not the only possible solution for the settlement of delimitation disputes. However, the basic structure of the subparagraph should be maintained in any further negotiations so as not to destroy the balance of interests reflected therein. In that connexion, his delegation would study carefully the working paper submitted by the United States representative enumer-

ating possible compromise formulas relating to that subparagraph (NG7/20).

86. Mr. STAVROPOULOS (Greece), speaking as Chairman of negotiating group 5, presented his report on the results of the work of the negotiating group (NG5/17) and his suggestion for a compromise formula (NG5/16). The latter document contained three articles: a new article 296, an article 296 *bis* and a general provision in the form of an article.

87. Article 296 of the informal composite negotiating text consisted of five paragraphs. Paragraph 4 of that article constituted the most important part of the group's mandate. The compromise reached on that issue was reflected in paragraph 3 of new article 296. That new draft had obtained a conditional consensus, i.e. a consensus conditional upon an overall package deal. It had been felt that paragraph 3 of the new article would provide a better basis for negotiation than the corresponding provision in the informal composite negotiating text, and should therefore be incorporated in the revision of the text and substituted for the existing paragraph 4 of article 296 in the informal composite negotiating text. However, since reservations had been expressed, the matter should be treated as an issue falling within the second category of issues listed in paragraph 9 of document A/CONF.62/L.28, namely, issues on which a degree of support for a particular formula or provision was so widespread and substantial as to offer a reasonable prospect of a consensus being reached.

88. As a result of the revision of paragraph 4, the other paragraphs of article 296 of the informal composite negotiating text had been treated in the following manner. Paragraph 1 of that article, which dealt with procedural aspects, had become new article 296 *bis*. That change had been accepted by consensus within the group; but because of its implications for paragraphs 2 and 3, the substance of which had not been within its mandate, that article would have to be considered by the plenary Conference or the appropriate committee, as the case might be. Because of the need for such consideration, therefore, the article should, in his opinion, also be included within the second category of issues listed in paragraph 9 of document A/CONF.62/L.28.

89. Paragraphs 2 and 3 of article 296 of the informal composite negotiating text, while unchanged in substance, had been incorporated as paragraphs 1 and 2 of the new article 296. Although the introduction to the new paragraph 1 had been amended, the change did not affect the substance of that provision.

90. Paragraph 5 of article 296 of the informal composite negotiating text had become paragraph 4 of the new article 296 with only a minor drafting change.

91. In addition, the group had discussed a general provision on the abuse of rights. It had been agreed by consensus that a provision concerning the concept of abuse of rights should be considered by the plenary Conference for incorporation in a suitable part of the convention. As that matter had repercussions beyond the mandate of the group, the group's view represented a recommendation to the plenary Conference.

92. Certain delegations had felt that article 297, subparagraph 1 (*b*) of the informal composite negotiating text was related to article 296, and had expressed the desire that its contents should be considered by the plenary Conference at an appropriate time.

93. Mr. DÍAZ GONZÁLEZ (Mexico) said that document NG5/16 contained a compromise formula which could be regarded as satisfactory and represented the result of effective negotiations between parties whose original positions had been diametrically opposed. It had been the compulsory conciliation procedure that had made it possible to reconcile apparently irreconcilable interests. The new text stipulated,

on the one hand, that parties had an obligation to adopt the conciliation procedure provided for in annex IV of the informal composite negotiating text and, on the other hand, that the report of the conciliation commission should not be legally binding. That provision would, in his opinion, prevent an abuse of legal procedures and would prevent the sovereign rights and discretionary powers of coastal States from being called intermittently into question. Since that point was of vital importance for the exercise and very existence of such rights and powers, the compulsory conciliation procedure had important advantages in that no legal opinions would be binding and problems arising from the improper implementation of the convention would be solved.

94. Mr. BILGE (Turkey) said that his delegation found itself once again obliged to point out that, when disputes existed between two or more States, recourse to judicial settlement or arbitration could be decided on and implemented only by mutual agreement between the States concerned. For that reason, without opposing judicial or arbitration procedures *per se*, his delegation firmly believed that the parties concerned should directly exercise freedom of choice concerning appropriate means of settling each individual dispute. That procedure was implicitly provided for in Article 33 of the Charter of the United Nations.

95. In one of its decisions, the International Court of Justice had stated that the parties had an obligation to undertake negotiations with a view to reaching an agreement. That obligation had been mentioned in particular in the case of enclosed waters in a recent decision handed down by an arbitration tribunal. Meaningful negotiations had become, in State practice, the main tool for the settlement of delimitation disputes.

96. The need for parties to decide by mutual agreement on the means of settling a dispute was of vital importance for States in the case of political and, in particular, territorial questions. In that connexion, the delimitation of maritime zones was no different from that of territorial zones—a point which the International Court of Justice had made, in the decision he had just mentioned, in connexion with the continental shelf.

97. State frontiers had always been determined directly and by mutual agreement by the States concerned, without the participation of third parties. Such frontiers, whether on land or sea, were as much within the domain of State sovereignty as within that of the State's vital interests.

98. In the opinion of his delegation, any dispute between States in those areas should be studied by the parties themselves. That was consistent with the principle of agreement, in accordance with which all delimitation questions could be

settled. For those reasons, his delegation opposed the adoption of a general system of compulsory jurisdiction within the context of the Conference. However, if certain States considered that compulsory jurisdiction would be more appropriate for their situation, the Conference could provide for an optional system of compulsory jurisdiction which could be adopted by those States that favoured it. In that manner, one group of States would be prevented from imposing its views on another, and States which were unwilling to bind themselves in advance to a system of compulsory jurisdiction would still be able to endorse the future convention.

99. If an optional system was not agreed on by the Conference, it was essential that article 297 of the informal composite negotiating text should clearly provide for the exclusion of disputes relating to the delimitation of maritime areas. In that connexion, subparagraph 1 (a) of that article should end after the words "historic bays or titles".

100. Mr. EVENSEN (Norway) said that his delegation had supported the position adopted by the group of coastal States as a whole during the negotiations on the question whether the procedures for the binding settlement of disputes should also apply to disputes which arose from the exercise by the coastal State of its sovereign rights over living resources in the exclusive economic zone. His delegation agreed with the delegations of other coastal States that an exemption from mandatory and binding settlement procedures must be made for such disputes.

101. The compromise formulas contained in document NG5/16 and, in particular, the proposed paragraph 3 of article 296, were far removed from the solution which his delegation would have wished for the important question of mandatory settlement procedures for disputes arising out of the exercise by the coastal State of its sovereign rights with regard to living resources in the exclusive economic zone. On that question the compromise formula would establish a procedure of compulsory conciliation which in practice could turn out to be very burdensome for the coastal State. Nevertheless, his delegation had expressed a willingness to accept a system on the lines proposed in the compromise formula, provided that those proposals met with similar approval by all other groups of delegations, and subject to a satisfactory solution of other issues. That favourable, though conditional, response remained the position of his delegation. In a spirit of compromise, it would be prepared to agree that the texts before the Conference should be regarded as having the broad support necessary for their eventual inclusion in a revised version of the informal composite negotiating text.

The meeting rose at 1 p.m.

106th meeting

Friday, 19 May 1978, at 3.30 p.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (*continued*)

REPORT OF NEGOTIATING GROUP 5 (*concluded*)

1. Mr. HAHM (Republic of Korea) noted with regret that some delegations had refrained from giving their full support

to machinery for settling disputes arising from the interpretation and application of the future convention. Yet such machinery was an integral part of any package deal designed to obtain a consensus. His delegation had always considered that, for a small country, the availability of effective procedures for the settlement of disputes was the best and sometimes the only means of safeguarding its legitimate interests and sovereign rights, particularly with respect to the delimitation of maritime boundaries.