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95th meeting

Friday, 5 May 1978, at 10.50 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

Preamble and final clauses

1. Mr. ZULETA (Special Representative of the Secretary-General) said that at its 28th meeting the plenary Conference had decided to request the Secretary-General to prepare draft alternative texts of the preamble and final clauses; the draft had been circulated as document A/CONF.62/L.13 and reproduced in volume VI of the official records of the Conference.[1] With regard to the preamble, the document noted that, in United Nations practice, reference was sometimes made to the decision to convene the conference that had adopted a treaty and to indicate that the new instrument both codified and progressively developed the law and did not affect the maintenance of the standards of customary international law in force in regard to matters not expressly regulated by the provision of the new treaty. The document submitted to the Conference made some suggestions in that regard. On the other hand, in accordance with the terms of reference of the Conference, it contained no mention of preliminary statements of a political nature.

2. With regard to the final clauses, the draft alternative texts had been formulated with a view to ensuring the greatest possible conformity with the terms of reference of the Conference, in which it was stated that the problems of the ocean space were closely interconnected and should be regarded as a whole with a view to the adoption of a convention acceptable to the largest number of States. From an analysis of the successive negotiating texts it seemed likely that the future convention on the law of the sea would contain a new set of rules of international law, which would include the codification or consolidation of generally accepted legal rules, the progressive development of new rules of international law, the instrument establishing a new international organization and, lastly, clauses under which the States would undertake to submit disputes arising from the interpretation or the application of the new convention to specific procedures, compatible with Article 33, paragraph 1, of the Charter of the United Nations. It was clear that the new situation might give rise to problems requiring solutions for which there were no relevant historic precedents.

3. The draft alternative texts of the final clauses contained 14 articles dealing with: (1) participation in the convention—signature; (2) ratification; (3) accession; (4) entry into force; (5) provisional application; (6) relation to other conventions; (7) reservations; (8) territorial application; (9) denunciation; (10) revision or amendment; (11) termination; (12) notifications by the depositary; (13) authentic texts; and (14) testimonium clause, place and date.

4. On each of those matters the secretariat had prepared foot-notes intended to assist in understanding the various problems that arose and to indicate the models on which the texts were based. He explained that, as the draft alternative texts had been prepared before the fifth session of the Conference, some of the notes referred to provisions which appeared in the revised single negotiating text that had emerged from the fourth session (A/CONF.62/WP.8/Rev.1 and WP.9/Rev.1)[2] but which did not appear in the informal composite negotiating text[3] or appeared there in modified form. That was the case with the foot-note relating to the transitional provisions, which now appeared at the end of the informal composite negotiating text. It was also the case of the foot-note mentioning a provision relating to the provisional application and which was missing from the informal composite negotiating text, but which had appeared in article 63 of the revised single negotiating text. Furthermore, the informal composite negotiating text contained provisions which were useful for the study of the final clauses, but which had not existed at the time of the preparation of the draft alternative texts: that was the case with articles 152 and 153 on periodic review and the Review Conference.

5. With respect to two questions, the draft alternatives made no suggestions. The first was the question of the relation to other conventions, dealt with in article 238 of the informal composite negotiating text, but only with regard to the protection of the marine environment. The settlement of that question required not only political decisions but also a delicate legal approach and perhaps fuller information about the international instruments that might be affected by the clause.

6. The second question was that of the entry into force and the connexion of the relevant clause with the provisions of the informal composite negotiating text dealing with the composition of the Council of the International Sea-Bed Authority. The Conference should consider whether, in addition to the quantitative criterion normally applied, it would not also be necessary to provide for a qualitative criterion that would enable the Council to be established as soon as the convention entered into force.

7. The PRESIDENT suggested that the Conference should consider the final clauses before the preamble.

8. Mr. ARIAS SCHREIBER (Peru) said that, even if the terms of the substantive provisions of the convention were not yet wholly known, enough was known about the probable contents of the convention to permit discussion on the preamble and the final clauses.

9. In the informal composite negotiating text, the four paragraphs that formed the preamble were rather meagre. For instance the fourth paragraph, which had been taken from the 1969 Vienna Convention on the Law of Treaties,[4] should be expanded to take account of the innovations in the draft convention on the law of the sea, which had the great merit not only of revising and codifying the rules of customary law but also of giving concrete form to the progressive development of the law of the sea in keeping with the changes that had occurred in the political, legal, economic, scientific and technological fields since the first two United Nations Conferences on the Law of the Sea.

10. Other matters that should be mentioned in the preamble were the principle of good faith, the rule *pacta sunt servanda*, the prohibition of the improper use of the law and the

[1] United Nations publication, Sales No. E.77.V.2.

[2] *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).

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

[4] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

peaceful settlement of disputes. Those principles were mentioned in the Vienna Convention, but it would not be superfluous to repeat them in so important an instrument as the new convention.

11. Among the other points that the Peruvian delegation would like to see mentioned in the preamble were the importance of the peaceful use of the sea and the oceans, the protection of the marine environment, the protection and rational use of resources, the establishment of a régime for the international area of the sea-bed compatible with the notion of the common heritage of mankind, the special interests and needs of the developing countries, and the link between the provisions of the convention and the objectives of the new international economic order. The Group of 77 intended to submit proposals on those points which should obtain general support. Perhaps other delegations would make other proposals, which would receive the same attention. However, proposals that were not generally acceptable should not be submitted.

12. In so far as the final clauses were concerned, he said that the secretariat document gave a very complete outline which took account not only of the provisions of the Vienna Convention on the Law of Treaties, but also of United Nations practice and of other international instruments. The final clauses that were of a purely formal character should be distinguished from those having a bearing on substantive provisions of the convention. One of those was the clause concerning the convention's relation to other conventions. On that point the informal composite negotiating text referred to the United Nations Charter, the principles of which were universally accepted even by countries not Members of the United Nations. The four Geneva Conventions of 1958 should cease to have effect as between the contracting parties that ratified the new convention since it would have the same field of application; and with respect to countries which had not ratified the 1958 Conventions but which became parties to the new convention, it would no longer be possible to rely on the earlier instruments. The other pre-existing international, regional or subregional treaties or agreements would remain in force only in so far as they were compatible with the convention.

13. In the Peruvian delegation's opinion, reservations should be admissible only in a very few cases. To admit reservations without limitation would jeopardize the universal character of the convention, would greatly complicate legal relations between states, would hamper the interpretation and application of the convention, and would be a constant source of disputes. If reservations could not be avoided, a selection must be made first in each committee, then in plenary; none should be allowed to certain provisions and, in the case of others, they should be restricted.

14. As the Vienna Convention had not yet entered into force, the Peruvian delegation was of the opinion that the 14 items appearing in document A/CONF.62/L.13 should receive consideration; his delegation would revert to them later. He inquired when the proposal his delegation had made in plenary on the establishment of an international commission on the law of the sea (A/CONF.62/L.22) would be taken up.

15. Mr. KOZYREV (Union of Soviet Socialist Republics) said it was high time that the work of the Conference should be brought to a conclusion and that the legal régime of the oceans should be standardized so that the seas would not become the scene of international disputes but, on the contrary would contribute to the development of peaceful relations between states and the well-being of peoples. He would not object to the final clauses being discussed first, as the President had suggested, but thought that only a general debate on that issue could be held at that stage, for a definitive text for the final clauses could not be settled before the work on the substantive provisions of the convention was completed.

16. He appreciated the efforts made by the Secretariat in its draft alternatives for the preamble and the final clauses to avoid raising issues likely to involve the Conference in interminable discussions which would hold up its work. He considered that, at that stage, any attempt to incorporate in the final clauses any provisions touching on substantive issues or connected with the basic provisions of the convention might invite polemics that would serve only the interests of those who wished the Conference to be a failure.

17. He was glad to note, therefore, that the draft final clauses prepared by the Secretary-General in document A/CONF.62/L.13 did not touch on those issues, and he was ready to support the draft. Admittedly, such delicate issues as reservations and the number of ratifications necessary for the entry into force of the convention might arise later, but in his opinion the Conference should not deal with those issues before having settled the basic problems still outstanding. It was on those problems that the Conference should concentrate, as its success depended on their solution. When once those problems had been settled, it would be much easier to draft the final clauses.

18. Mr. VILLADSEN (Denmark) said that, in its efforts to codify and to develop progressively the law of the sea, the Conference had to take into account an important development in the field of international law and international institutions which would have a direct bearing on the implementation of the future convention in a number of European countries. That development was the European Economic Community, to which nine European States had decided to transfer competences in various fields considered by the Conference. As a consequence of that transfer of competences, the nine member States of the Community could not enter into engagements with respect to third States as regards matters over which the Community as such had competence. Such engagements vis-à-vis third States had to be undertaken by the Community, whose institutions had replaced those of the member States in fields where competence had been transferred to the Community. That being so, it was clear that, in order to be bound by the future convention on the law of the sea, the European Economic Community would have to become a party to the convention, together with its member States, which had retained competences in other fields covered by the convention. In order to make it possible for the Community to become a contracting party to the convention, a specific provision to that effect would have to be included among the final clauses. If the future convention did not include such a provision, neither the Community nor its member States would be able to subscribe to the provisions of the convention which came within the competence of the Community. Accordingly, it was necessary that the obligations under the convention should be undertaken by the Community, and hence that it should become a party to the future convention together with its member States.

19. A commitment by the European Economic Community with regard to certain matters covered by the future convention would not be merely a logical consequence of the internal regime of distribution of competences between the member States and the Community, but would also respond to the need to give third States which ratified the convention the legal guarantee that they were dealing with partners capable of honouring vis-à-vis those States the totality of the obligations envisaged in the convention. In letters circulated as documents A/CONF.62/48[5] and A/CONF.62/54,[6] the chairmen of the delegations of the member States which had

[5] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VI (United Nations publication, Sales No. E.77.V.2).

[6] *Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3).

in 1966 and 1977 respectively held the presidency of the Council of Ministers of the European Communities had drawn the attention of the President of the Conference to the need to allow the European Economic Community to become a party to the convention by including a special provision to that effect in the final clauses.

20. The informal composite negotiating text contained provisions on various matters, in particular on the conservation and utilization of living resources in the exclusive economic zone, the protection and preservation of the marine environment and commercial policy, in regard to which competence to enter into international obligations had been vested in the Community. For example, the Community as such, as a single entity, negotiated in matters relating to fisheries: it had concluded a fishery agreement with the United States of America and had begun negotiations with many other countries in and outside Europe with a view to concluding similar agreements.

21. As was pointed out in the Secretary-General's study of the preamble and final clauses, the Community was, moreover, a party to a number of multilateral agreements of a regional character for the protection of the environment (the Paris and Barcelona conventions on marine pollution) and to several international commodity agreements of a universal character concluded under United Nations auspices (the wheat, cocoa, tin and coffee agreements). In addition, the Community had concluded agreements of association or co-operation which went well beyond mere trade agreements with a great many States represented in the United Nations—the Lomé Convention, for instance, signed in February 1975, to which more than 50 African, Caribbean and Pacific States had become Contracting Parties. The European Economic Community was therefore an important and vital reality in the modern world.

22. In his capacity as head of the delegation of the country which, during the first six months of 1978, held the presidency of the Council of Ministers of the European Communities, he stressed the great importance which the nine member States of the Community attached to the inclusion among the final clauses of a provision which would enable the Community to become a party to the future convention.

23. Mr. TEMPLETON (New Zealand) drew attention to the letter dated 6 May 1976, addressed to the President of the Conference by the delegations of Fiji, New Zealand, Tonga, the Trust Territory of the Pacific Islands, and Samoa, the text of which was reproduced in the letter dated 3 May 1978 from the leader of the New Zealand delegation addressed to the President of the Conference (A/CONF.62/64). In resolution 3334 (XXIX), paragraph 3, the General Assembly had requested the Secretary-General to invite certain territories to participate as observers in future sessions of the Conference; since then, two of these territories, Papua New Guinea and Suriname, had become independent. In the letter referred to, the signatories had given notice of their intention to propose at the appropriate time that the final clauses should make provision for the accession to the convention of the remaining territories listed in the General Assembly resolution. The time had come to make that proposal, which would be supported also by the observer for the Trust Territory of the Pacific Islands. Unfortunately, the other territories concerned were not represented at the current session of the Conference, on account of the heavy cost which attendance would involve for them.

24. He referred to the articles on settlement of disputes proposed in May 1976 in document A/CONF.62/WP.9: they included, in paragraph 4 of article 13, a provision opening the disputes settlement procedure, to be provided for in the convention, to any territory which had participated as observer at the Conference, on an equal footing with the contracting parties. For some reason unknown to him, that provision had been dropped from the revised single negotiating text contained in document A/CONF.62/WP.9/Rev.1. The letter of 6 May 1976 had further pointed out that the protection of the rights accorded to the territories in question would not be achieved simply by giving them access to the disputes settlement procedure but would require that they be accorded the status of contracting parties, which was likewise the only way to ensure that they would meet the obligations arising under the new convention. It was all the more necessary to give those territories the status of contracting parties as there was no longer a special provision in the informal composite negotiating text giving them access to the disputes settlement procedure.

25. The letter had also pointed out that there were precedents for the accession to international agreements of territories which had not achieved full independence. In that connexion, he drew attention to foot-note No. 10 at the end of document A/CONF.62/L.13, where the Secretary-General cited various United Nations agreements which provided for the possibility of separate participation by dependent territories. The Cook and Niue Islands, formerly administered by New Zealand, had become constitutionally completely independent in all decision-making on matters concerning the law of the sea and had full legislative competence in respect of all matters dealt with in the draft convention. For instance, by a sovereign act which was in no way the concern of New Zealand, the Government of the Cook Islands had adopted legislation establishing a 200-mile exclusive economic zone.

26. He stressed that New Zealand had no power to give effect to obligations in respect of any territory other than its own. The future convention would not merely confirm the sovereign rights of the contracting parties and protect them, to which protection the territories in question were equally entitled, but would also impose substantial obligations, something which the developing countries, and in particular the land-locked and geographically disadvantaged countries, should not ignore. He therefore proposed that the final clauses of the convention should include a provision to enable those territories which had participated as observers in the Third United Nations Conference on the Law of the Sea to sign and ratify or accede to the convention.

27. Mr. WYLE (Trust Territory of the Pacific Islands) strongly supported the proposal of New Zealand and the four other Oceania States that had signed the letter of 6 May 1976. It was in the interests of both the Trust Territory of the Pacific Islands and the world community that contracting party status should be granted to the territories mentioned in paragraph 3 of General Assembly resolution 3334 (XXIX). While the Trust Territory needed the rights and privileges granted by the convention to developing countries and the protection offered by the procedures for the settlement of disputes mentioned by the representative of New Zealand, the world community, for its part, needed the assurance that the convention with all its obligations would apply in the Micronesian maritime space. Legal competence for the marine resources in that space was purely Micronesian. In October 1977, the Congress of Micronesia had enacted a law, which was at present in force, establishing its jurisdiction over a 200-mile fishery zone, and an act on the exclusive economic zone was being drafted. As a result of the participation of the Trust Territory's delegation in the Conference, the existing 200-mile Act was strictly in conformity with the informal composite negotiating text, and future legislation concerning the Micronesian economic zone would likewise be in conformity with that text.

28. He considered, therefore, that it was essential that Micronesia be granted contracting party status if it was fully to discharge its obligations under the convention and to be able to control and exploit its own resources. His delegation

was prepared to co-operate in that spirit in the drafting of the final clauses.

29. Mr. KRISPIS (Greece) said that, on the whole, the final clauses of the informal composite negotiating text (articles 298 to 303) were satisfactory, but should be supplemented by further provisions on such subjects as denunciation, revision or amendment, termination and notifications by the depositary. In the opinion of his delegation, it would be premature to tackle the question of reservations, since the negotiations had not been completed and it was as yet unknown what would be the final form of the revised negotiating text. In addition, it would be necessary to define in more general terms than those in paragraph 5 of article 74, paragraph 4 of article 83 and in article 238 the relationship between the future convention and existing bilateral and multilateral conventions. His delegation would in due time submit a proposal on the subject.

30. His delegation wondered whether the proposals of the representative of Peru concerning the establishment of an international commission on the law of the sea (A/CONF.62/L.22) and of the representative of Portugal concerning periodic conferences on international ocean affairs (A/CONF.62/L.23) might not be merged. It endorsed the views expressed by the representative of Denmark on behalf of the European Economic Community.

31. Mr. WOLF (Austria) said that the final clauses of an international treaty, particularly those relating to the admissibility of reservations, had a major impact on the application of the treaty, particularly in so far as the rights and obligations of parties were concerned. The group of land-locked and geographically disadvantaged countries considered that, in order to avoid reducing considerably the scope of the convention, no reservations should be permitted to any of the articles of the future convention. Moreover, since certain reservations to a particular part of the future convention on the law of the sea were already under discussion, such prohibition would be in conformity with article 19 (*b*) of the Vienna Convention on the Law of Treaties.

32. Mr. PERIŠIĆ (Yugoslavia) said that the final clauses of the convention should be based on the provisions of existing international treaties, but that the special nature of the future convention must also be taken into consideration. The convention would embody rules covering not only matters already dealt with by customary and treaty law—such as the régime of the territorial sea and the high seas—but also matters concerning which there was a progressive development of international law, such as the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction or the transfer of technology. The convention would deal with problems which could be settled bilaterally or regionally, but it would also provide for solutions of universal application. Some rules would even constitute *jus cogens*. The question was to what extent the principle *pacta tertiis nec nocent nec prosunt* could be applied in the matter of the common heritage of mankind. The convention would merely define more precisely the method of exploitation of areas and resources which, according to the 1970 Declaration,[7] belonged to all States. Account must also be taken of the possibility that States not parties to the convention might also participate, on the basis of equitable criteria, in the exploitation of the resources of the sea-bed beyond the limits of national jurisdiction. The participation of third States was provided for in several international treaties or conventions. In the circumstances, the convention on the law of the sea should be open to all States since it dealt with matters of interest to all of them—a consideration that was reflected in the existing draft. With respect to the participation of intergovernmental organizations, he pointed out that the rules for treaties concluded exclusively between States and those for treaties concluded between States and other subjects of international law were not identical (Vienna Convention, article 3).

33. The convention should also specify that signature by States or intergovernmental organizations would have to be finally confirmed by ratification or some other means of expressing consent to be bound by a treaty for which provision was made under the constitutional rules of the State or organization concerned. It should, however, be possible for States to express, by their signature, their consent to be bound by the convention, as was provided for by article 12 of the Vienna Convention. All subjects authorized to sign the convention should be able to accede to it, but only after the expiry of the period fixed for signature.

34. It would, therefore, be inappropriate for the convention to enter into force unless it had become binding for a large section of the international community. It contained rules which were, on the whole, acceptable to the majority of States and it should eventually be signed by the majority of participating States. The slowness of the ratification process would, therefore, be attributable to the protracted formalities necessary for approval of the convention in various States and would not mean that those States rejected the convention. The number of ratifications necessary could, therefore, be the same as for certain other recent conventions of a universal character, but his delegation considered that a proportion of approximately one-third of the participants in the Conference could be more appropriate.

35. The work done so far had shown that it might be necessary to allow reservations on certain questions, though they should be as few as possible. Those rules to which reservations would be admissible—to the exclusion, of course, of the basic principles of the convention—would have to be specified and, to the extent possible, the contents of the reservations precisely defined.

36. A general provision, based on the transitional provision of the informal composite negotiating text, concerning the application of the convention to Non-Self-Governing and Trust Territories and to territories under foreign or colonial domination should also be incorporated in the final clauses.

37. In conclusion, he said that the final clauses should embody provisions concerning the functions of the depositary, which would not relate solely to the question of notification by the depositary but would cover all its functions as listed in article 77 of the Vienna Convention.

38. Mr. SPÁČIL (Czechoslovakia) said that his delegation had hoped that the Conference would deal without delay with the preamble and final clauses, because it had thought that there was already a very detailed draft text which would not give rise to major objections. But apparently a number of delegations wished to revise the existing texts by injecting new, potentially controversial, questions. While respecting the desire of those delegations to improve the informal composite negotiating text, he feared that such an approach would hold up the work: time was running out and he urged those delegations to take the existing text as a basis for discussion, making only slight amendments to it.

39. In his delegation's opinion, it would be very difficult to settle the text of the final clauses so long as the precise contents and the form of the convention were not known. For example, how could there be any talk of prohibiting reservations when the final text was not yet settled? For the time being, the Conference should confine itself to a general and preliminary exchange of views and postpone any decision until later.

40. His delegation was not yet in a position to express a final opinion on the question raised by the representative of

[7] Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)).

Denmark concerning the possible participation of the European Economic Community in the convention. As the representative of Yugoslavia had rightly emphasized, a complex question was involved which had legal and political implications and deserved closer examination. If the sole issue was whether the member States of the Community could make a declaration to the effect that they considered themselves bound by the convention, the problem would be different, but it was much more difficult to envisage that the Community could sign the convention or accede to it.

41. The question raised by the representative of New Zealand concerning the granting of contracting party status to territories that had not yet achieved full independence was no less delicate. Any decision on the matter should be based on the fundamental provisions of the United Nations General Assembly, particularly the Declaration on the Granting of Independence to Colonial Countries and Peoples.[8]

42. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) said that it was essential for the Conference to concentrate its efforts on negotiations concerning the most pressing problems of the law of the sea so as to make progress towards the speedy completion of the drafting of the convention. His delegation was therefore prepared to agree to the provisions of the preamble and final clauses as they appeared in the informal composite negotiating text. However, as the debate had shown some delegations seemed to wish to amend and supplement those provisions, which meant that the Conference would have to consider very complex questions, some of them even extraneous to the law of the sea.

43. In his view, it would be wrong to give international organizations, whatsoever their nature, the right to sign the convention on the same footing as States. Such organizations were secondary subjects of international law in that they derived their existence from States. A decision to permit any international organization to sign the future convention would immediately give rise to questions such as why the same right had not been accorded to other such organizations, to what extent the organization would be capable of meeting its obligations and exercising its rights under the convention, when the organization would have those rights and obligations and when the member States would have those rights and obligations.

44. Certain delegations had mentioned that there were international organizations to which their member States had delegated their powers in some matters governed by the convention on the law of the sea. That was true, and no one was challenging the fact. In his delegation's view, however, it was still not necessary to permit such organizations to participate in the convention on the same footing as States. The problems posed by such organizations could be dealt with by adding an article under which the provisions of the convention would apply not only to States but also to international organizations having competence in matters governed by the convention.

45. In that case, it would have to be specified that the organizations would notify the depositary of their acceptance—within the limits of their competence—of the rights and obligations arising from the convention.

46. Mr. ROSENNE (Israel) said that it should not be taken for granted that the preamble and final clauses could be left to the plenary meeting alone. Some of the final clauses raised political questions which went to the heart of matters discussed elsewhere in the Conference: the committees should be free to make recommendations on matters covered by the final clauses—for example, revision, temporal validity of the proposed treaty, its relation to existing or future treaties, and reservations. It could not be assumed that single and uniform provisions were feasible with regard to the whole of the composite text.

47. With regard to the final clauses already in the informal composite negotiating text, which were on the whole uncontroversial, it might be considered that there was little need for article 301, concerning the status of the annexes, since what it said was already covered by the general law, now consolidated in article 31 of the 1969 Vienna Convention on the Law of Treaties which had been partly intended to simplify the drafting of final clauses. However, article 301 drew attention to a problem of some seriousness, namely whether some of the annexes, particularly annexes II and III, should be as rigid and formal as the convention itself in the matter of their revision. Both those annexes appeared to be too detailed, and thought should be given to their simplification, as well as to methods of less formal amendment. That was, however, a matter on which the First Committee should be allowed to express itself first.

48. With regard to article 302, concerning the authentic texts, he welcomed the fact that the Drafting Committee intended to use sophisticated techniques to facilitate its task. As the representative of a State which did not habitually use any of the languages in which authentic texts of the draft convention would be prepared, he reminded the Secretariat and the Drafting Committee that, in principle, every delegation was entitled to scrutinize and comment on any part of any of the various language versions which would be authentic, and that, in the case of languages which were not generally known, the drafting of the text must necessarily be entrusted to the appropriate language services of the Secretariat and to representatives who were familiar with those languages and willing to take part in the work.

49. His delegation considered that participation in the convention as a contracting party of a body other than one of the States or groupings of States which had taken part as of right in the Conference should be subject to the existence—and to international recognition by the other States concerned—of constitutional and legislative competence recognized internationally by the other States to take the measures necessary to guarantee the discharge on the international and internal levels of all the interlocking obligations imposed by the composite text. Such competence must be matched by the capacity to bear international responsibility for the consequences of any breach of the convention, responsibility of the kind that only States participating as full members of the Conference could incur, and which could be established according to the provisions of part XV of the informal composite negotiating text concerning the settlement of disputes between States, or the provisions of Article 33 of the Charter of the United Nations. It was in the light of that double criterion that his delegation would examine at the appropriate time any proposals concerning the contracting parties to the future convention.

50. The so-called transitional provision could not be considered as being one of the final clauses or as having any relevance to the proposed convention and should be deleted. His delegation reserved its right to revert to that point if necessary. It also reserved its position on the proposals made by the delegations of Peru and Portugal, respectively, concerning the establishment of a standing body and the holding of periodic conferences.

Mr. Góralczyk (Poland), Vice-President, took the Chair.

51. Mr. TÜNCEL (Turkey) felt that the preamble and final clauses would need to be supplemented in certain respects. The preamble should spell out more clearly the objectives and aims of the convention. Furthermore, without prejudice to the generality of the convention, the preamble should contain wording taking account of the many special cases to

[8] General Assembly resolution 1514 (XV).

the importance and frequency of which the work of the Conference bore testimony.

52. With regard to the final clauses, he said that his delegation had submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction a written proposal concerning the relationship between the future convention and previous bilateral and multilateral treaties. Following difficulties related to their definition, it had subsequently withdrawn the proposal, but, in view of the way the current debate was going, it thought that the question would arise again, and it would therefore revert to it at the appropriate time.

53. He agreed with the view that the various substantive provisions of the convention should be settled in the first place; however, his delegation was in favour of the acceptance of reservations.

54. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that he wished to make some preliminary comments on the preamble and final clauses and reserved his right to return to them in greater detail at a later stage.

55. His delegation considered the preamble as important as the body of the text; it should refer to the background and main objectives of the convention, particularly the principal resolutions of the General Assembly which governed its scope and purpose. Those resolutions included not only resolution 2749 (XXV), which was mentioned in the preamble, but mention should be made of resolutions 2750 (XXV) and 3067 (XXVIII), the first, concerning the peaceful utilization of the sea-bed and the ocean floor and the use of their resources in the interests of mankind, and the second, concerning the interrelation of the various parts of ocean space which therefore should be considered as a whole. The preamble should also state certain principles of international law, such as good faith, respect for validly concluded treaties, and the settlement of disputes by agreement between the parties concerned.

56. The final clauses should make provision for the widest possible participation, not only by all States, but also by dependent territories which enjoyed autonomy in their external relations. Consideration of the possible participation of certain national liberation movements that enjoy a certain status in the international community should also not be ruled out, nor should consideration of various intergovernmental organizations such as the Food and Agriculture Organization of the United Nations, the Inter-Governmental Maritime Consultative Organization and the South Pacific Permanent Commission. The work of the last-named body had been fully recognized. No decision could be taken concerning the entry into force of the future convention until the composition of the Council of the Authority was known. It would, however, be important to require acceptance or ratification by a sufficiently large number, say half or two thirds, of the States participating in the Conference. On the question of the relationship of the convention with earlier agreements, his view was that the 1958 Geneva Conventions could remain operative as between the parties which had ratified them, in so far as they were compatible with the new convention, and the same principle could, in general, apply to the other subregional or regional legal instruments.

57. In view of the flagrant omissions from the negotiating text, it would be impossible to reach a consensus in the adoption of the convention and it would also be impossible to prevent a clause envisaging reservations. If reservations were not to be admissible, means would have to be found of taking due account of the position of certain delegations which was not reflected in the existing text. His delegation intended to propose in the Second Committee the inclusion, as article 54 *bis*, of a safeguard clause which would provide for co-ordination between municipal law and the provisions of the convention with respect to zones beyond the limit of 12 nautical miles. But it might happen, depending on the way in which the discussions proceeded, that his delegation might submit that proposal anew, at a plenary meeting, for inclusion as a final clause. His delegation would make further comments when it had a more detailed and clearer idea of the main aspects of the convention.

58. Mr. AL-WITRI (Iraq) said that the final clauses should make provision for the possibility of opening the convention for signature by all the observers at the Conference, particularly the national liberation movements. Those movements should have all the rights and obligations established by the convention and the chance to participate in the organizations which would be set up at a later stage.

59. His delegation entirely approved the content of the transitional provision. Nevertheless, it believed that the scope of that provision should be extended to preserve the rights of dependent or occupied territories or those under colonial domination, for the sea belonged to all peoples and not merely to States.

The meeting rose at 1.05 p.m.

96th meeting

Friday, 5 May 1978, at 3.35 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*)

Preamble and final clauses (continued)

1. Mr. OMAR (Libyan Arab Jamahiriya) remarked that it was impossible at the present stage to give detailed consideration to the final clauses, especially the clause on reservations, which was intimately linked with the nature of the provisions to be included in the convention. His delegation hoped that the convention as adopted would be acceptable to the largest possible number of States, if not to all States, and that reservations would therefore be limited as far as possible.

2. One point of capital importance to many delegations was the need to protect the interests of peoples subject to colonial and foreign domination. He hoped that the suggestions previously made in that connexion by the Arab delegations would be taken into consideration. As regards the participation of international governmental organizations, he felt that such participation might be acceptable if it were founded on well-defined criteria and perhaps linked to the contribution made by such organizations to the achievement of the convention's objectives.