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Report of the President to the Conference

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I should be grateful if you would arrange to have this communication registered and distributed to delegations as an official document of the Conference.

(Signed) A. K. H. MORSHED
 Representative of Bangladesh
 to the Third United Nations Conference
 on the Law of the Sea

DOCUMENTS A/CONF.62/L.141 AND ADD.1*

Report of the President to the Conference

[Original: English]
 [29 April 1982]

1. I hope this will be the last report which I shall make to the Conference. You will recall that on 23 April 1982, I submitted to you a report in accordance with rule 37 of the rules of procedure. That report is contained in document A/CONF.62/L.132 and Add.1. Yesterday and this morning, 53 delegations made statements on that report and on the proposals contained in the addendum to the report. This afternoon and this evening, I shall study carefully the records of that debate and, based upon my assessments of that record, I shall make an appropriate recommendation to the plenary meeting tomorrow morning.

2. After the exciting, momentous and, for me, exhausting events of 26 April, I had wrongly assumed that my work was done. This was unfortunately not to be the case. The representatives of the Group of 77 and the representatives of the group of Eastern European (socialist) States approached me and Mr. Engo to hold further informal consultations on the draft resolution governing preparatory investments in pioneer activities relating to polymetallic nodules, as contained in annex IV of A/CONF.62/L.132. In addition, the representatives of a number of industrialized countries requested Mr. Engo and I to hold further consultations on some remaining difficulties which they had on provisions of Part XI of the draft convention and its annexes. Following appropriate consultations, Mr. Engo and I, with the able assistance of my good friend from Fiji, Mr. Satya Nandan, held intensive informal consultations on 27 and 28 April. In this report, I shall attempt to give you an account of the results of those consultations.

3. The representatives of the Group of 77 made three requests with respect to the draft resolution in annex IV of document A/CONF.62/L.132. First, they maintained that the size of the pioneer area contained in paragraph 1 (e) is too large and should be reduced. This position was supported by Japan. The representatives of the Group of 77 also requested that the relinquishment procedure in paragraph 1 (e) should be accelerated and the areas relinquished should not be in bits and pieces but in contiguous areas. Secondly, the Group of 77 requested that in paragraph 9 (a), the Enterprise should be guaranteed production authorization in respect of two mine sites instead of one and that the production authorization of the Enterprise should enjoy priority over the pioneer investors. Thirdly, the Group of 77 requested the industrialized countries that they should assist the Enterprise in financing the exploration and exploitation of the second mine site.

4. The third demand of the Group of 77 was strongly opposed by the Soviet Union and others, who argued that this was an unacceptable attempt to reopen the negotiations on financial matters which had been conducted in negotiating group 2 and which had been settled.

5. In respect of the first and the second demands, a deal was struck whereby in return for the Group of 77 not insisting on its position on paragraph 1 (e), the industrialized countries will agree that the Enterprise should have production authorization for two mine sites and such production authorization shall enjoy priority over the pioneer investors. This proposed reformulation of paragraph 9 (a) is contained in the addendum to this report.

6. In respect of paragraph 1 (a) (ii), the Soviet Union, supported by the other members of the group of Eastern European (socialist) States made two complaints. Their first complaint was that it was legally impermissible and inappropriate for an international diplomatic conference, such as this, to decide to grant the status of a pioneer investor to private companies which will be identified by means of a reference to a United Nations document. The legal opinion of the Legal Counsel of the United Nations was sought. Mr. Suy's legal opinion and the reply of the Soviet Union thereto are contained in document A/CONF.62/L.133. The response of the Legal Counsel to the Soviet Union's reply is contained in document A/CONF.62/L.139. The United Nations Legal Counsel is of the opinion that the approach adopted in paragraph 1 (a) (ii) is legally permissible and consistent with the practice of the United Nations. I concur with this opinion.

7. The second complaint of the Soviet Union and its colleagues from the Eastern European (socialist) Group was that paragraph 1 (a) (ii) discriminates against the States referred to in 1 (a) (i) and 1 (a) (iii). Their argument was that in the case of the States referred to in 1 (a) (i) and 1 (a) (iii), every State must sign the convention before its State enterprise, its natural or juridical person could qualify as the pioneer investor. In the case of paragraph 1 (a) (ii), if a consortium consists of four companies from four States, it is not required that all four States must sign the convention before the consortia could be registered as a pioneer investor. On principle, there was merit in the Soviet complaint.

8. However, in return for this concession, the representatives of the Group of 77 were able to extract from the industrialized countries an even greater concession in paragraph 8 (c). In paragraph 8 (c), no plan of work for exploration and exploitation shall be approved for any of the consortia referred to in paragraph 1 (a) (ii) unless all the States whose natural or juridical persons comprise those consortia are parties to the convention. This requirement is even higher than that contained in the draft convention and in annex III. For this reason, I believe that the concession by the Group of 77 in paragraph 1 (a) (ii) is more than compensated by the concession by the industrialized countries in paragraph 8 (c).

9. I should also like to point out that the principle of non-discrimination is a double edged sword. The principle of non-discrimination means, in law, treating equals equally and giving differential treatment to those who are not equals. One could point out that the Soviet Union is a relative newcomer in the development of sea-bed mining technology, equipment

*Incorporating document A/CONF.62/L.141/Add.1/Corr.1, of 30 April 1982; document A/CONF.62/L.141/Add.1 contained in the annex to this report.

and expertise. One could also point out that under paragraph 1 (a) (i), the Soviet Union is guaranteed one mine site, whereas in paragraph 1 (a) (ii), the seven States, not counting Japan, have to share four mine sites.

10. On the very first day of this session of the Conference, I made a statement in which I reaffirmed, on behalf of the Collegium, our commitment to work for the adoption of the convention, preferably by consensus. With respect to the proposals of the United States and the other co-sponsors of A/CONF.62/L.121, I had informed the Conference of the parameters within which any productive negotiations and consultations must be conducted. What are these parameters? First, any proposed modification must not call into question the fundamental framework and elements of the existing text of Part XI and its annexes. Secondly, any proposed modification must take into account the interest of other countries and must not be harmful to some or all of them. Thirdly, the proposed modification must be negotiated within the framework and deadlines set out in document A/CONF.62/L.116. It is the desire of every delegation in this Conference to have a convention which will be supported by all States, including the United States. I believe I am right when I say that the Conference is willing to pay a price in order to obtain the support of the United States for the convention. That price is not, however, an unlimited one. It must be a reasonable price. It must be a price which does not hurt the interest of other countries, especially the developing countries. Guided by these considerations, I have proposed in the addendum to this report, a number of modifications to Part XI and to annex III which, in my view, do not hurt the interests of the developing countries or the group of Eastern European (socialist) States. The proposed modifications will enhance the prospects that the United States and the other major industrialized countries will join us in the adoption of the convention tomorrow and will subsequently sign and ratify the convention.

11. I will conclude my statement by making an appeal to all the delegations in the Conference to support the proposals contained in the addendum to this report. To the developing countries, I have this to say to them. I know that what I am asking you to do is to agree, essentially, to make a series of unilateral concessions to the United States and other industrialized countries. But I ask you to bear in mind that the concessions which I am asking you to make do not hurt in any significant way, the interests of your group or of your countries. I believe it is a price worth paying in order to enhance the prospects of attracting universal support for our convention. We must also not forget that Part XI is not the only part of our convention. There are many other parts of the convention in which our countries have strong, concrete and vital interests. Because of the package-deal principle, we cannot adopt the one part without the other. Let me give you an example to illustrate my point. This convention, if adopted, is a landmark achievement for the land-locked States in respect of their right of access to and from the sea and freedom of transit.

12. To the United States and the other co-sponsors to A/CONF.62/L.121, I address this appeal. I know that the modifications which I have proposed to Part XI and its annexes contained in the addendum to A/CONF.62/L.132 and the addendum to this report look meagre compared to the demands in A/CONF.62/L.121. I want to assure you that Mr. Engo and I have, within the parameters which we set out for ourselves, gone as far as we can to assist you. We believe that these proposed modifications do address most of your fundamental concerns and we hope that it will be possible for you to join the Conference tomorrow in adopting the convention.

13. To the members of the group of Eastern European (socialist) States, I address the following appeal. Nothing that

Mr. Engo and I have proposed, by way of modifications to Part XI and its annexes, call into question the fundamental framework of the existing text or are injurious to your interest. We appeal to you to support our proposals.

14. Finally, I cannot conclude without paying a special tribute to the 11 good samaritans who co-sponsored document A/CONF.62/L.104. At a time when the Group of 77 and the United States were locked in a confrontation, you came to our rescue. You built a bridge between them. You opened up channels of communication and dialogue. You have made it possible for Mr. Engo and I to build upon your compromise proposals.

15. We have a rendezvous with history tomorrow. With your help, your understanding, your co-operation and your good will, I am confident that we will succeed in keeping that rendezvous.

ANNEX

Proposed modification relating to unfair economic practices

Article 151 (as contained in document A/CONF.62/L.78): add a new paragraph 2 (*bis*) reading as follows:

"2 (*bis*). Rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration and exploitation of minerals from the Area. In the settlement of disputes arising under this provision, States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements."

Article 151 (as contained in document A/CONF.62/L.78), paragraph 3: redraft the paragraph to read as follows:

"3. The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from nodules, under such conditions and applying such methods as may be appropriate by adopting regulations in accordance with article 161, paragraph 7."

Article 162 (as contained in document A/CONF.62/L.78), paragraph 2 (*n*) (ii): insert the following sentences after the second sentence: "Priority shall be given to the adoption of rules, regulations and procedures for the exploration and exploitation of polymetallic nodules. Rules, regulations and procedures for the exploration and exploitation of any resource other than polymetallic nodules shall be adopted within 3 years from the date of a request to the Authority by any of its members to adopt such rules, regulations and procedures in respect of such resource."; and in the last sentence replace "Such" by "All".

Article 155 (as contained in document A/CONF.62/L.78), paragraph 4: replace "two-thirds" by "three-fourths".

Annex III (as contained in document A/CONF.62/L.78), article 6, paragraph 3: redraft the text of the introductory paragraph to read as follows:

"3. All proposed plans of work shall be dealt with in the order in which they are received. The proposed plans of work shall comply with and be governed by the relevant provisions of the Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of technology. If the proposed plans of work conform to these requirements, the Authority shall approve such plans of work provided that they are in accordance with the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:"

Annex IV (as contained in document A/CONF.62/L.132), paragraph 9 (*a*): redraft the text to read as follows:

"9. (*a*) In the allocation of production authorization, in accordance with article 151 of the Convention and annex III, article 7, the pioneer investors who have obtained approval of plans of work for exploration and exploitation, shall have priority over all applicants other than the Enterprise which shall be entitled to production authorization for two mine sites including that referred to in article 151, paragraph 2 (*c*). After each of the pioneer investors has obtained production authorization for its first mine site, the priority for the Enterprise contained in annex III, article 7, paragraph 6 shall apply.