

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/SR.180

180th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVI (Summary Records, Plenary, First and Second Committees, as well as Documents of the Conference, Eleventh Session)*

50. The draft resolution in annex IV of document A/CONF.62/L.132 represented a new development which responded to historical reality, with all the ambiguities which that implied. It was his hope that the Preparatory Commission would take care of such ambiguities. The size of mine sites allocated to pioneer investors required further clarification as also did the question of what would revert to the Authority in general and what was specifically reserved to the Enterprise. The obligations of pioneer investors under paragraph 7 (c) were expressed in vague terms as were the relationships between pioneer investors and the Enterprise with regard to production authorizations. Paragraph 9 (a) required further elucidation on the latter point. The issue of exploitation before the convention came into force was also left vague. No consideration had been given to the possibility that the convention might not enter into force as a consequence, for example, of non-ratification. In such a case it would seem that the Preparatory Commission would become the Commission and the resolution would replace Part XI of the draft convention; the result would be a mini-convention with many issues unresolved and with the Preparatory Commission called upon to exercise a range of responsibilities and discretionary powers that the Conference had not wanted to grant to the carefully balanced Council of the Authority.

51. Draft resolution II did, however, provide a forum and a time-frame in which the Preparatory Commission could adjust the theoretical concepts of the 1970s to the economic realities of the 1980s and 1990s.

52. Mr. BRENNAN (Australia) said that, at the beginning of the current session, the Conference had been facing three

major issues, namely, preparatory investment protection, the question of participation in the convention and the terms of reference of the Preparatory Commission. A further problem had arisen in connection with the desire of the delegation of the United States to reopen parts of Part XI which had already been negotiated and had been the subject of consensus in August 1980.

53. The proposals made by the President in his report (A/CONF.62/L.132) had brought consensus closer and his delegation supported them fully. The report contained constructive proposals with regard to preparatory investment protection; those were very important to the developed countries and to the Eastern European countries in so far as they would encourage exploration and the development of new technology and would bring closer the time when the common heritage of mankind would begin to provide benefits for all. Draft resolution II in annex IV of the President's report provided assurances of approval for plans of work and production authorizations. His delegation welcomed the proposed modifications to articles 150, 155 and 161, which would bring consensus closer.

54. Gaps still existed between the positions of delegations and there was as yet no certainty that the convention would be adopted by consensus. He appealed to all to make every possible effort to overcome the remaining differences. He hoped that the convention would be adopted by consensus and would thus enjoy universal support.

The meeting rose at 12.45 p.m.

180th meeting

Thursday, 29 April 1982, at 5.05 p.m.

President: Mr. T. T. B. KOH (Singapore)

Report of the President on informal consultations conducted on 27 and 28 April

1. The PRESIDENT* said that the representatives of the Group of 77 had made three requests concerning the draft resolution in annex IV of the President's report (A/CONF.62/L.132). First, they had maintained that the size of the pioneer area contained in paragraph 1 (e) was too large and should be reduced. That position had been supported by Japan. They had also requested that the relinquishment procedure in paragraph 1 (e) should be accelerated and that the areas relinquished should be in contiguous areas. Secondly, they had requested that in paragraph 9 (a), the Enterprise should be guaranteed production authorization in respect of two mine sites instead of one and that that authorization should enjoy priority over the pioneer investors. Thirdly, they had requested that the industrialized countries should assist the Enterprise in financing the exploration and exploitation of the second mine site.

2. The last demand of the Group of 77 had been opposed by the Soviet Union and others; they had argued that it was an unacceptable attempt to reopen the negotiations on financial matters which had been conducted in negotiating group 2 and which had been settled.

3. In respect of the first and the second demands, a deal had been struck whereby in return for the Group of 77 not insist-

ing on its position on paragraph 1 (e), the industrialized countries would agree that the Enterprise should have production authorization for two mine sites and such production authorization would enjoy priority over the pioneer investors. That proposed reformulation of paragraph 9 (a) was contained in the annex to document A/CONF.62/L.141.

4. The Soviet Union, supported by the other members of the group of Eastern European (socialist) States, had made two complaints in respect of paragraph 1 (a) (ii). Their first complaint had been that it was impermissible and inappropriate for an international diplomatic conference such as that on the law of the sea to decide to grant the status of a pioneer investor to private companies which would be identified by means of a reference to a United Nations document. The legal opinion of the Legal Counsel of the United Nations had been sought. His legal opinion and the reply of the Soviet Union thereto were contained in document A/CONF.62/L.133. The response of the Legal Counsel to the Soviet Union's reply was contained in document A/CONF.62/L.139. He himself concurred with the Legal Counsel's opinion that the approach adopted in paragraph 1 (a) (ii) was legally permissible and consistent with the practice of the United Nations.

5. The second complaint of the Soviet Union and its colleagues from the group of Eastern European (socialist) States had been that paragraph 1 (a) (ii) discriminated against the States referred to in subparagraphs 1 (a) (i) and 1 (a) (iii). Their argument had been that in the case of the States referred to in subparagraphs 1 (a) (i) and 1 (a) (iii), every

* The full text of the President's statement has been distributed as document A/CONF.62/L.141.

State had to sign the convention before its State enterprise or its natural or juridical person could qualify as a pioneer investor. In the case of paragraph 1 (a) (ii), if a consortium consisted of four companies from four States, it was not required that all four States should sign the convention before the consortia could be registered as a pioneer investor. On principle, there had been merit in the Soviet complaint.

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

7. The principle of non-discrimination meant, in law, treating equals equally and giving differential treatment to those who were not equals. One might point out that the Soviet Union was a relative newcomer in the development of sea-bed mining technology, equipment and expertise, and that under paragraph 1 (a) (i), the Soviet Union was guaranteed one mine site, whereas in paragraph 1 (a) (ii), the seven States, not counting Japan, had to share four mine sites.

8. With respect to the proposals of the United States and the other sponsors of document A/CONF.62/L.121, he said that the relevant negotiations and consultations had been conducted within the following parameters. First, any proposed modification must not call into question the fundamental framework and elements of the existing text of Part XI and the related annexes; secondly, any proposed modification must take into account the interests of other countries and must not be harmful to them; and, thirdly, the proposed modification must be negotiated within the framework and deadlines set out in document A/CONF.62/L.116. On that basis, he had proposed a number of modifications (A/CONF.62/L.141, annex) to Part XI and to annex III which, in his view, did not hurt the interests of the developing countries or the countries of the group of Eastern European (socialist) States and which would enhance the prospects that the United States and the other major industrialized countries would sign and ratify the convention.

9. It was his hope that all delegations would support the proposed modifications. He was asking the developing countries to make a series of unilateral concessions to the United States and other industrialized countries, bearing in mind that those concessions did not hurt in any significant way the interests of their Group or of their countries, that that price was worth paying in order to enhance the prospects of attracting universal support for the convention, and that Part XI was not the only part of the convention.

10. The modifications he had proposed to Part XI and the related annexes in the annexes to documents A/CONF.62/L.132 and L.141 looked meagre compared to the demands in document A/CONF.62/L.121, but did address most of the fundamental concerns of the United States and the other sponsors of the latter document, and he hoped that it would be possible for them to join the Conference in adopting the convention.

11. With regard to the questions raised by the members of the group of Eastern European (socialist) States, he said that his proposals did not call in question the fundamental framework of the existing text and were not injurious to the interests of those States; he appealed to the latter to support those proposals.

12. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, recalled that at the 179th meeting, referring to paragraph 1, subparagraphs (a) (i) and (a) (ii), of draft resolution II, contained in annex IV of document A/CONF.62/L.132, he had said that the text of the convention implied a very close link between the rights and obligations of States which, directly or through natural or juridical persons, wished to receive contracts for the exploration or exploitation of resources forming part of the common heritage of mankind.

13. According to the aforementioned draft resolution, States or State enterprises whose investments received protection would in practice acquire rights to be granted in accordance with the convention, which implied the existence of an imbalance between the rights and obligations of those States. The text of paragraph 1, subparagraphs (a) (i) and (a) (ii) of draft resolution II confirmed the fears of the developing countries, which were shared by the Soviet Union. The aforementioned States would acquire the right to explore without signing the convention when, in the interest of justice, the States which wished to receive rights flowing from the Conference should be required to sign the convention, even though they realized that there was a difference between signature and ratification, in order to avoid setting an undesirable precedent.

14. The aforementioned subparagraphs established a distinction with regard to the obligations of States that either on their own account or through their natural or juridical persons wished to receive the benefits of preparatory investment protection. Some States, including the Soviet Union, would have to sign the Convention. Other States, such as the Federal Republic of Germany, France, Japan and the United States, would not be obliged to sign it, because their enterprises would receive preparatory investment protection provided some countries—Belgium, Italy and the Netherlands, for example—signed the convention. That was discriminatory.

15. It had been pointed out that, according to paragraph 8 (c), no plan of work for exploration and exploitation would be approved unless the certifying State was a party to the convention. Belgium, Italy and the Netherlands could be parties to the convention, but according to the United Nations scale of contributions, the contributions of those countries would not be sufficient for the establishment of an organ or for the organ to obtain enough resources for the establishment of the Enterprise, whose activities were to protect the interests of the developing countries. Consequently, there would be no organ to approve the plans of work.

16. In his view, some States had found it advantageous to lead the Conference astray by arranging for the convention to contain provisions that would not be implemented. He recalled that in his letter of 29 April 1982 addressed to the President of the Conference (A/CONF.62/L.144) he had pointed out that the opinion of the Legal Counsel (A/CONF.62/L.139) replying to his own letter of 22 April (A/CONF.62/L.133) made it clear that the distinguishing requirements applied to the three categories of pioneer investors referred to in draft resolution II, subparagraph 1 (a). The Legal Counsel thus acknowledged in his opinion that the questions raised in the Soviet delegation's letter of 22 April, particularly those relating to the aforementioned subparagraph, were of a political nature. It should be recalled that in its previous statements his delegation had observed that the Soviet Union would be unable to support draft resolution II as it currently stood if the provision relating to the protection of preparatory investments still contained wording which placed the Soviet Union in an unfavourable position vis-à-vis several other States.

17. Mr. GIORGOLO (Italy), speaking in exercise of the right of reply, said that each delegation could foresee diverse

possibilities. His delegation considered that the possibility envisaged by the Soviet Union delegation was purely theoretical.

18. Mr. JUNG (Federal Republic of Germany), speaking on a point of order, requested that a vote be taken on the proposal to amend article 1, paragraph 2, of annex VI to the draft convention to read "The seat of the Tribunal shall be in the free and Hanseatic City of Hamburg, in the Federal Republic of Germany". The co-ordinator of the Russian language group had been the only member of the Drafting Committee to oppose that amendment, because he considered that it involved a substantive question.

19. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said that in his view that was a substantive question which should be settled in a plenary meeting.

The meeting was suspended at 5:55 p.m. and resumed at 6 p.m.

20. The PRESIDENT announced that the representative of the Federal Republic of Germany had withdrawn his request that a vote should be taken on the question he had raised. He requested the Chairman of the Drafting Committee to hold consultations with interested delegations with a view to finding a generally acceptable solution.

The meeting rose at 6.05 p.m.

181st meeting

Friday, 30 April 1982, at 11.50 a.m.

President: Mr. T. T. B. KOH (Singapore)

Adoption of the agenda

1. The PRESIDENT said that a number of changes had been made to the Conference's agenda (A/CONF.62/118) for the remaining meetings of the session. The revised provisional agenda, which would be distributed shortly, read as follows:

- "1. Report of the Credentials Committee
- "2. Report of the President in accordance with rule 37 of the rules of procedure
- "3. Report of the President on informal consultations conducted on 27 and 28 April
- "4. Report of the Chairman of the Drafting Committee
- "5. Adoption of the convention together with the related resolutions
- "6. Statements by delegations after the adoption of the convention and its related resolutions
- "7. Draft resolution A/CONF.62/L.127
- "8. Resumed session of the Conference for the conclusion of the work of the Drafting Committee and the adoption of its recommendations
- "9. Arrangements for the adoption and signing of the final act at Caracas, Venezuela, in consultation between the Government of Venezuela and the Secretary-General of the United Nations."

2. In connection with item 5, he reminded delegations that the draft convention contained in document A/CONF.62/L.78,¹ as modified by document A/CONF.62/L.93, by document A/CONF.62/L.132, annexes I, II, III and V, by document A/CONF.62/L.137, and by the annex to document A/CONF.62/L.141 and the related draft resolutions constituted an integral whole. Those draft resolutions were: (a) draft resolution I, establishing a Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea, contained in document A/CONF.62/L.94, together with modifications in the second paragraph of annex III in document A/CONF.62/L.132 and in the second paragraph of document A/CONF.62/L.137; (b) draft resolution II, governing preparatory investment in pioneer activities relating to polymetallic nodules, contained in annex IV of document A/CONF.62/L.132, as modified in document A/CONF.62/L.141; (c) draft res-

olution III, contained in document A/CONF.62/L.94; and (d) draft resolution IV, on national liberation movements, contained in annex I of document A/CONF.62/L.132. In all those documents the recommendations of the Drafting Committee adopted by the informal plenary meeting (A/CONF.62/L.85/Add.1-9 and A/CONF.62/L.142/Add. 1) were incorporated.

3. If he heard no objection, he would take it that the Conference wished to adopt the provisional agenda.

It was so decided.

Report of the Credentials Committee

4. Mr. HALL (Executive Secretary of the Conference) said that the Credentials Committee had recently received credentials from several States not listed in document A/CONF.62/119. To those in paragraph 3 should be added the names of Ghana, Ireland, Madagascar, Nicaragua, Sri Lanka and Thailand; to those in paragraph 4, Yemen; and to those in paragraph 5, Democratic Yemen, Guinea and Panama.

5. The PRESIDENT said that if he heard no objection he would take it that the Conference wished to adopt the report of the Credentials Committee.

It was so decided.

Report of the President in accordance with rule 37 of the rules of procedure (continued)

Report of the President on informal consultations conducted on 27 and 28 April (continued)

6. The PRESIDENT invited the Conference to consider the two reports jointly.

7. Mr. de SOTO (Peru), speaking as Chairman of the Group of 77, said that although some of the proposals in the two reports went considerably farther than the Group of 77 would have liked, it was nevertheless prepared to accept them, provided that the convention and its related resolutions were to be adopted by consensus. Before committing itself to accepting the proposals, therefore, the Group asked the President to state whether any objections had been raised to an adoption by consensus.

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XV (United Nations publication, Sales No. E.83.V.4).