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1973-1982

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103rd Plenary meeting

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prudence—in other words, with the existing state of international law.

52. The situation in negotiating group 7 had been as follows: the group did not have any fixed "nucleus" but all delegations interested in the problem of delimitation (they numbered about 60) had taken part in the discussions. Apart from a very small number of delegations which had adopted a neutral approach, two thirds of the total had supported a solution based on "equitable principles" (NG7/10), while the other third had favoured the "equidistance method" (NG7/2). Thus, the majority of interested countries was in favour of the first solution; and, in any case, the supporters of the two opposing ideas agreed that articles 74 and 83 of the informal composite negotiating text needed to be amended.

53. With regard to the second criterion, document NG7/10 submitted by Turkey and 26 other countries accurately reflected the principles of international law in its present state, as defined in jurisprudence, in the opinions of writers and in the practice of States. On the other hand, document NG7/2, which had been submitted by 20 States, established a system of rules which would enable its supporters to obtain undue advantages for themselves. The equidistance method, which was merely one method among others, was elevated to the status of a "general principle". If no agreement could be reached, a party wishing to do so could apply it unilaterally and, if the case were brought before a third party, the applicable rules would of course be the same rules based on the principle of the median or equidistance line.

54. The draft co-sponsored by Turkey, on the other hand, was purely defensive in nature. The sponsors wished to protect their legitimate rights against the unfair effects of the equidistance method and they hoped that their amendments to articles 74 and 83 would be adopted when the presidential team came to revise the informal composite negotiating text.

55. He regretted that it had not been possible to find time for discussing the possibility of bringing article 15, on the delimitation of the territorial sea, into line with the articles on the delimitation of the exclusive economic zone and of the continental shelf, or for considering the important problem of islands and semi-enclosed seas.

56. On the question of the width of the territorial sea, he said that coastal States had absolute sovereignty over the territorial sea, subject to the right of innocent passage through it by foreign vessels. Any extension of the territorial sea would therefore involve an annexation of maritime space. In the open sea that might be of little consequence but, in the vicinity of straits and in semi-enclosed seas, annexation of maritime space could affect the interests of other coastal States and disturb the delicate equilibrium established over the centuries. Coastal States should therefore be careful to hold consultations before attempting to extend their territorial sea.

The meeting rose at 1.30 p.m.

103rd meeting

Thursday, 18 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)

REPORT OF THE SECOND COMMITTEE (continued)

1. Mr. VILLADSEN (Denmark), speaking on behalf of the member countries of the European Economic Community, said that some of the suggestions made by Mr. Nandan, Chairman of negotiating group 4, in document NG4/9/Rev.2¹ might serve as a basis for a compromise, whereas others would require further negotiations.

2. The countries of the Community agreed with the proposed wording of paragraph 1 of articles 69 and 70, which would provide that land-locked and geographically disadvantaged States or "States with special geographical characteristics" should have the right to participate, on an equitable basis, in the exploitation of a surplus of the living resources of the economic zones of certain adjoining coastal States. The Community countries were, however, prepared to consider other formulations, such as the one suggested by the Peruvian delegation in negotiating group 4. In that connexion, he said that the Community considered that the fishing rights of land-locked and geographically disadvantaged countries should be limited to surplus resources and he noted with satisfaction that that basic principle had been retained in

the proposed new text. In addition, the regional arrangements referred to in paragraph 3 of article 69 and in paragraph 4 of article 70 should take account of all the equitable principles on which those articles were based. The reference to such arrangements in paragraph 2 of article 69 and in paragraph 3 of article 70 was therefore undesirable.

3. In view of the importance of the question of the right of land-locked and geographically disadvantaged States to fish in the exclusive economic zones, it would be necessary to define more clearly the meaning of the expression "States with special geographical characteristics" and of the concept "the same subregion or region" in order not to stray too far from the principle of vicinity embodied in the informal composite negotiating text.²

4. The countries of the Community would like to be able to take up again at an appropriate time the consideration of the text as it now stood, in order to deal with outstanding problems.

5. Mr. MWANGAGUHUNGA (Uganda), referring to article 69, said he was of the opinion that the developing land-locked States should have the right to participate in the exploitation of the total living resources of the exclusive economic zones of coastal States of the same subregion or region, in accordance with the principle that disadvantaged States should be given preferential treatment by the world community in the allocation of scarce economic resources. They should therefore be granted the right to participate in the total allowable catch. The terms and modalities of such participation should be established by the States concerned

¹Official 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.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

through bilateral subregional or regional agreements taking account of the factors referred to in paragraph 2 of article 69. Some regions might, for example, accord equal treatment to land-locked developing States, for which there were precedents in Africa. If other regions wished to limit such participation to surplus resources, the provision would allow them to do so. Although it might be said that paragraph 5 of article 69 offered the possibility of granting equal or preferential treatment to land-locked developing countries of the same subregion or region, his country would prefer their right to equitable participation in the total allowable catch to be more explicitly stated in paragraph 1. His delegation hoped that the negotiations would make it possible to find satisfactory wording for that paragraph which would take account of the interests both of coastal and of land-locked developing countries. Uganda, itself a developing land-locked country, considered that the world community should defend the right of those countries to participate in the total allowable catch of the subregion or region in which they were situated and that the convention should contain enough safeguard clauses so that that right would not be exercised at the expense of the coastal States concerned.

6. His delegation's attitude towards the many suggestions made concerning the continental shelf would depend on the treatment accorded to the developing land-locked States with regard to participation in the exploitation of the living resources of the exclusive economic zone.

7. Mr. MAWHINNEY (Canada) said that the suggestions by the Chairman of negotiating group 4 on the question of the access of land-locked and geographically disadvantaged States to the living resources of the exclusive economic zones of their subregions and regions provided a good basis for further negotiations. His delegation interpreted articles 69 and 70 to mean that the access of the land-locked and geographically disadvantaged States to the exploitation of those living resources continued to be limited to surplus resources; it would have to be clearly stated in the final text that a coastal State which approached the point of being able to harvest the entire allowable catch had no financial obligation of any kind, for it could not be expected to pay for the right to utilize its harvesting capacity to the full in the 200-mile zone off its own coast.

8. The concept of region or subregion was one of the key elements in the new proposals. It must be made clear that land-locked and geographically disadvantaged States could not claim to belong to more than one region or subregion, for, if they could, the privileges granted to them under articles 69 and 70 would be excessive. Similarly, it should be clearly established that no coastal State could be considered to belong to more than one region or subregion, because it would be an unacceptable burden for a coastal State to have to deal with claims coming from all directions. The legal limitations of the privileges and obligations provided for in articles 69 and 70 therefore still had to be defined.

9. Like the delegations of Mexico, Argentina, Norway and Jamaica, his delegation considered that the provisions of articles 69 and 70 had an important bearing on the other issues dealt with by the Conference. In negotiating group 6, frequent reference had been made to the relationship between the issue studied by negotiating group 4 and that of the definition of the outer limit of the continental margin. That relationship had been stressed not so much by coastal States having a broad continental margin as by many land-locked and geographically disadvantaged States and had also been emphasized in the progress report by the Chairman of the Second Committee at the 94th meeting. It would be unthinkable to revise the informal composite negotiating text by incorporating a compromise text emanating from negotiating group 4 without undertaking a concurrent revision of article 76 relating to the continental shelf. The two issues were part

of a whole whose elements could not be considered in isolation. The negotiations held at the last three sessions of the Conference had shown that the only definition of the outer limits of the continental margin which was likely to receive sufficiently wide support was the Irish proposal (see A/CONF.62/C.2/L.98), combined with the revenue-sharing formula contained in article 82 relating to the exploitation of the continental shelf beyond 200 miles. That formula represented a substantial concession made in good faith and in a spirit of compromise by the States which had a broad continental margin. Only if the two sets of provisions, namely, the text relating to land-locked and geographically disadvantaged States and the Irish proposal, taken together with the revenue-sharing formula, were incorporated at the same time in the negotiating text would they command sufficient support to offer a prospect of consensus. The text of negotiating group 4 on its own would not lead to that result.

10. At such a critical phase, when the Conference was about to achieve its goal, his delegation considered that it would be shirking its responsibility if it did not express its views on that issue, which was of vital importance for the success of the work of the Conference. It was prepared to continue the negotiations on that issue and, in that connexion, shared the view of the Chairman of negotiating group 2.

11. Mr. LUKABU-K'HABOUJI (Zaire) said that the document prepared by the Chairman of negotiating group 4 fell short of his delegation's expectations. Articles 69 and 70 took slight account of African views, although the problems with which those articles dealt were of particular concern to Africa and it would be quite natural to pay particular attention to a geographical region that was particularly concerned by such problems.

12. Referring to paragraph 1 of article 70, he said that the words "exploitation of an appropriate part of the surplus of the living resources" were inappropriate in that they prejudged the terms of the agreements envisaged under paragraph 3 of the same article and eroded the bargaining power of all States and, in particular, that of coastal States. In any event, only a proportion of the living resources was exploitable, but it was not for the Conference to say how that proportion would be determined. His delegation therefore reiterated its earlier request for the deletion of the words "of the surplus".

13. The expression "States with special geographical characteristics" was not very felicitous and, although his country was concerned mainly with the content of the definition of such States in paragraph 2 of article 70, it thought that the wording of that definition should be specific and couched in the customary terms. Even though the definition as it stood seemed to be generally accepted, some delegations and, in particular, his own, did not consider it entirely satisfactory. In order to avoid confusion, it proposed that the words used in article 70 should be replaced by the words "geographically disadvantaged States", which occurred in articles 150, 151, 153, 159 and many others.

14. With regard to the terms and modalities of participation referred to in paragraph 3 of article 70, his delegation proposed that the wording of that paragraph should be based on the text of paragraph 2 (e) proposed by the coastal States in document NG4/3.

15. Mr. BALLAH (Trinidad and Tobago) noted with satisfaction the significant progress made in the three negotiating groups. He felt that with further intensive negotiation the proposed text should be able to command sufficient support to offer a good prospect of a consensus.

16. Commenting on document NG4/9/Rev.2, he said that his delegation was more concerned with the substance or content of the concept of access by land-locked, geographi-

cally disadvantaged and other States to the living resources than with the question whether it was termed a "right", which was theoretical and might in practice be illusory. Such countries should have access to an appropriate share of the living resources of the exclusive economic zones of coastal States within a region or sub-region, not merely to a part of the excess over the coastal State's capacity to harvest the living resources of the zone. Such access could be accorded on the basis of flexible quotas reflecting the availability of the resource, the dependence of the fishing communities of coastal States on such resources and the traditional dependency of certain geographically disadvantaged States on such resources. The stated intention to give access to the surplus resources might be reflected in the *de facto* recognition of the right of access to a reasonable and flexible quota of the entire allowable catch, which would not necessarily be detrimental to the fishing communities and industries of coastal States.

17. The coastal State and other States participating in the exploitation of a given resource should co-operate in scientific research programmes to contribute to the preservation and restocking of species and should undertake joint evaluation exercises. Commissions might be set up, comprising representatives of States engaged in a particular fishery, which could eliminate any element of bad faith in the coastal State's subjective determination of the total allowable catch.

18. The establishment of joint ventures should be considered as a possible alternative to paragraph 1 of articles 69 and 70 and not as a substitute solution.

19. Mr. KOZYREV (Union of Soviet Socialist Republics) said that it was essential to work out a text concerning the regime of territorial waters, gulfs, archipelagos, etc. The legal status of the economic zone would affect certain articles, and article 55 should be supplemented with a second paragraph stipulating that no State could lawfully claim sovereignty over any part of the sea beyond its territorial waters (C.2/Informal Meeting/7). That proposal had attracted considerable support from the socialist countries, the group of land-locked and geographically disadvantaged States and some Western European, Asian and African countries in the Second Committee, and its inclusion in the composite text would be one of the positive results of the Conference.

20. All delegations supported certain positive suggestions made by negotiating group 4, and the USSR understood the aspirations of the land-locked and geographically disadvantaged countries, but the economic interests of coastal States also had to be taken into account and it would be unfair to ignore their wishes. The report of the Chairman of that group was a good basis for negotiation with a view to reaching a definitive compromise.

21. Referring to the work of negotiating group 6 on the definition of the outer limits of the continental shelf, he said that several proposals had been submitted by African and Arab countries and by the group of land-locked and geographically disadvantaged States, to the effect that the limit of the continental shelf should not be beyond 200 miles. Some countries had proposed that that should be the limit of the continental margin, while others had preferred the Irish formula. His country had proposed that the delimitation should coincide with the 500 isobath in areas where the shelf extended beyond 200 miles. However, no proposal had received sufficient support and article 76 of the informal composite negotiating text was not acceptable to the majority. The USSR wished to make a further proposal: the maximum limit would be fixed at 100 miles beyond the 200-mile limit, making 300 miles altogether, but beyond that line, no State should seek to extend its jurisdiction or claim a part of the sea-bed, for such a claim would restrict the common heritage of mankind. That principle, which was founded on equity and took account of the interests of all mankind, had attracted

wide support. If it was decided to consider it in great detail, the proposal might become one of those in the second category (see A/CONF.62/28, para. 9). His country was ready to co-operate in seeking a solution which would satisfy all countries, developed or developing, and free of all discrimination.

22. He drew the attention of the Chairman of the Second Committee to an inaccuracy in his report (100th meeting). The report stated that recognition of the right invoked by States whose continental shelf extended beyond 200 miles, together with the system of contributions provided for in article 82 of the negotiating text, and a solution of the aspirations of the land-locked and geographically disadvantaged States, constituted an essential element of the general agreement on the matters referred to the Second Committee. That argument had been relied upon by some delegations in order to impose a unilateral point of view on delegations as a whole during consideration of other matters; however, a link of such a type had not been and would never be established. The land-locked countries were not insisting on access to the mineral resources of the zone or the shelf and were ready to support the right of coastal States to fix the limit of the zone at 200 miles, and the sovereign rights of such States over the living and mineral resources, provided that their right of access to the living resources was recognized.

23. He added that his delegation requested that the composite text should include its proposal that sunken ships and aircraft, as well as their equipment and cargo on board, might be salvaged only by the flag State or with the flag State's consent (C.2/Informal Meeting/39).

24. Mr. GARDINER (Ireland) said that the representative of Denmark had already spoken on behalf of the member countries of the European Economic Community, which considered that the compromise proposals relating to articles 69 and 70 formed part of a package to be negotiated, as the Mexican, Norwegian, Jamaican and other delegations had mentioned.

25. His delegation's view was that an essential element in the package was the definition of the continental shelf, for the negotiation of which the amendment proposed by Ireland to article 76 (see A/CONF.62/C.2/L.98) contained all the necessary ingredients. For the coastal States to give up something like 75 per cent of the continental margin beyond a 200-mile limit (see A/CONF.62/C.2/L.98/Add.2) would certainly be a major compromise, as was reflected in the widespread support, even among States with a broad continental shelf, which it had attracted. The recognition by Ireland of the principle of the sharing of the revenues from beyond the 200-mile limit was a further concession, and in that connexion he paid a tribute to the constructive views expressed by the delegation of Jamaica (102nd meeting).

26. His delegation hoped that the negotiations might continue, even at that late stage, and that a satisfactory agreement could be reached on all the package elements to produce an appropriate revised negotiating text, and it would welcome the opportunity to participate in such negotiations.

27. Mr. POP (Romania) congratulated the Chairman of the Second Committee and the chairmen of the negotiating groups that had dealt with questions within the Committee's mandate on the work they had done.

28. His delegation had had occasion to explain at length the geographical, economic and juridical reasons why it had difficulty in accepting article 62 as it stood in the informal composite negotiating text. Access to the living resources of the economic zone for land-locked and geographically disadvantaged countries was contemplated only within the region or subregion to which the country belonged. For countries or regions where there were fishery resources, the situation was more or less settled or at least on the way to being settled. There were, however, regions and subregions where the fish-

ery resources were insufficient even for the coastal countries. The question of a surplus did not arise and probably never would, and for land-locked and geographically disadvantaged countries, the right of access in such a region or subregion was a purely theoretical question without any practical point.

29. For that reason his delegation, jointly with the Yugoslav delegation, had submitted a proposal (C.2/Informal Meeting/1) for amending paragraphs 2 and 3 of article 62, the object of which was to accord to geographically disadvantaged developing countries situated in a region with limited fishery resources the right of access to other regions where there was a surplus. That proposal corresponded to an elementary idea of justice. It was not reflected in the results of the work of the Second Committee or in the suggestions by the Chairman of negotiating group 4 (NG4/9/Rev.2), which were concerned mainly with articles 69 and 70, and which his delegation supported, but which also contained a proposal for amending paragraph 2 of article 62. The latter proposal was not on the same lines as the proposal by his own and the Yugoslav delegations.

30. It was totally unjust, and inconsistent with the new international order, that coastal States, some of them highly developed countries, should be favoured with the new economic zones with access to vast living resources, while some developing countries would lose the right to fish in some regions of the world where they had formerly enjoyed that right. For that and other reasons, his delegation would support all proposals opposed to the extension of the sovereignty of coastal States over the economic zone and to the incorporation of that zone in their territory.

31. With regard to the question of the delimitation of the maritime zones, his delegation supported the comments of those who had upheld the principle of equity.

32. Mr. ROBINSON (Jamaica) said that some delegations had referred to his delegation as one of the supporters of the establishment of a link between the problems concerning the continental shelf and the problems concerning the access of land-locked and geographically disadvantaged countries to the living resources of the economic zone. Actually, his delegation had said that, if a link was to be established, it should be between the whole series of problems concerning the outer limit of the continental shelf on the one hand and the whole group of problems concerning the access of land-locked and geographically disadvantaged countries to the living resources of the economic zone on the other.

33. Mr. SHARMA (Nepal) said he was surprised by the attitude of several delegations regarding the concept of an economic zone. The land-locked countries had accepted that concept at the Caracas session, on condition that coastal States acknowledged their rights in the zone. Now it appeared that the concept was to be extended to the high seas, the common heritage of mankind, and the compromise formula proposed by the Chairman of negotiating group 4 would limit the right of land-locked States merely to a surplus—if any. That formula was unacceptable to the Nepalese delegation. Besides, the formula took no account of the fact that in many respects there was no similarity between land-locked States and geographically disadvantaged States. The formula put the land-locked States wholly at the mercy of the coastal States, disregarding principles of justice and equity.

34. He called for the goodwill of the international community towards the land-locked States, which were geographically disadvantaged and lacking in resources.

35. Mr. RABETAFIKA (Madagascar) said that, since his delegation had had an opportunity earlier to state its views on the matters considered in negotiating groups 4, 5, 6 and 7, he would confine himself to a few general comments which he thought essential.

36. In general, his delegation supported the statement made by the representative of Mexico at the preceding meeting on the position of the co-ordinating group of the coastal States.

37. It had two specific reservations to make regarding the compromise suggestions by the Chairman of negotiating group 4, to whose chairmanship he paid a tribute. The first reservation concerned paragraph 3 of article 69 and paragraph 4 of article 70. His delegation considered that the participation of land-locked States and States with special geographical characteristics in the living resources of the economic zone could only concern the surplus of such resources, if any. Secondly, the definition of States with special geographical characteristics was far too narrow; other criteria should be taken into account as well, such as economic considerations and the level of development.

38. In view of the law in force in Madagascar, his delegation considered that the question of the delimitation of the continental shelf called for further overall negotiations.

39. Like other delegations, it regretted that the Second Committee had not been able to consider the régime of islands and the question of enclosed or semi-enclosed seas, which were, after all, referred to in document A/CONF.62/62, and hoped that those topics would receive due priority in future negotiations. So far as the régime of islands was concerned, he referred to a new article 121 proposed jointly by his and nine other delegations (C.2/Informal Meeting/21) and wished to make an interpretative statement concerning paragraph 4 of that article. That paragraph should be construed as applying to islands which were still under a colonial régime and hence was not applicable to islands that were or should normally be under the sovereignty of the State belonging to the same geographical area with which such islands formed a geological, historical, economic and juridical whole, according to the principle of *status quo ante*, at the time when the principal State and political community came into being.

40. His delegation reiterated its reservations in respect of article 3, concerning the territorial seas; its position in that matter would depend on what happened to the safeguard clause proposed by the delegation of Ecuador as a new article 54 *bis* of the future convention (C.2/Informal Meeting/29).

41. He referred in conclusion to an amendment proposed by his and many other delegations to article 55 (C.2/Informal Meeting/34 and Corr.1 and 2), and stressed that there could be no compromise on the character *sui generis* of the exclusive economic zone.

42. Mr. LALLAH (Mauritius) said that he would limit his comments to two points: the suggestions made by the Chairman of negotiating group 4 and the régime of islands, to which the representative of Madagascar had alluded.

43. On the first point, he stated that Mauritius abided by the declaration of the Organization of African Unity relating to the access of geographically disadvantaged States, whether land-locked or otherwise disadvantaged, to the exclusive economic zone of neighbouring coastal States.³ The suggestions of the Chairman of negotiating group 4 were open to three objections: first, they did not adequately give effect to the legitimate rights of coastal States over the exclusive economic zone; second, the definition given in paragraph 2 of article 70, which was restricted to the geographical "situation" of States, should be extended to the geographical "circumstances" of States; and, third, as the representative of Mexico had pointed out at the previous meeting, it was impossible to endorse the proposals at the current stage since progress had not been made on the question of the delimitation of the continental shelf. Many delegations had refused to establish a link between access by land-locked or geographically disadvantaged countries and the extent of the

³*Ibid.*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/33.

continental shelf. The existence of such a link should be recognized for reasons of compromise and also because the interests and needs of both the coastal State and disadvantaged States would be better served if a developing coastal State were able to diversify its economy by developing the resources of its continental shelf and reducing its dependence on the living resources of the exclusive economic zone. His delegation had great hopes of a consensus on those matters.

44. So far as the second point was concerned, he said that the representative of Madagascar had made a welcome clarification concerning the proposals he had co-sponsored in relation to the régime of islands. The delegation of Mauritius understood that the provisions of paragraph 4 of document C.2/Informal Meeting/21 did not apply to islets belonging to island States like Mauritius. That was an important point which had an impact on the transitional provisions envisaged in the preamble and final clauses concerning the resources of territories still under colonial administration.

Mr. Tiwari (Singapore), Vice-President, took the Chair.

45. Mr. STAVROPOULOS (Greece) commended the Chairman of the Second Committee for his praiseworthy efforts, the outcome of which was seen in the unquestionable progress made on a number of questions, and for his report.

46. Referring to the first part of the informal composite negotiating text, concerning the territorial sea, he stressed that it was generally accepted and confirmed by wide international practice that States had a right to extend their territorial sea up to 12 miles. When or whether such a right might be exercised would depend on the particular interests and the wisdom of every State, which maintained full freedom of action on that matter.

47. His delegation further considered that there was room for improvement in the third part, concerning straits, so far as the rules and procedures relating to safe overflight were concerned.

48. Turning to the fourth part, he said that the question of archipelagos belonging to continental States had not yet been settled in the informal composite negotiating text; he had no objection to the relevant provisions which dealt only with archipelagic States, but felt that a fair solution should be found for other archipelagos, as they suffered serious injustice.

49. Questions such as those concerning the régime of islands and enclosed or semi-enclosed seas had been exhaustively discussed at all previous sessions and settled in a satisfactory manner. His delegation did not consider, therefore, that there were arguments justifying changes, except for those advanced in favour of the deletion of paragraph 3 of article 121, which would be desirable in order to avoid the adoption of arbitrary criteria.

50. With respect to delimitation, his delegation wished to emphasize, first, that there was no doubt, in its opinion, that the principle of equidistance constituted the best starting point for the solution of the problem; second, if there was going to be any mention of the principle of equity, it should inevitably be linked with a compulsory third-party settlement procedure; third, there should be an objective rule which would be applied by the parties during the critical period until delimitation was fixed either by agreement or by adjudication; fourth, if agreement was not reached within a reasonable time, the new law of the sea should provide for a procedure or procedures entailing a binding decision.

51. It was obvious that the last two points formed part of the balance within the framework of the convention, and anything upsetting that balance would be a serious setback which, it was to be hoped, the Conference would not accept.

52. Mr. YANKOV (Bulgaria) said that useful discussions had taken place in the Second Committee on questions within its mandate; he thanked the Chairman of that Committee for his report, although the Bulgarian delegation would have preferred a more comprehensive and precise report on the negotiations.

53. As was apparent from the discussions, many provisions in the informal composite negotiating text relating to questions dealt with by the Second Committee could be described as compromises capable of leading to consensus—for example, the provisions concerning the régime of the territorial sea and contiguous zone, innocent passage in the territorial sea, straits used for international navigation and, above all, the régime of transit passage. His delegation would therefore confine its comments to three points.

54. First, as regards the right of access to the living resources of the exclusive economic zone, the suggestions of the Chairman of negotiating group 4 constituted a reliable basis for constructive negotiations, but the margin for manoeuvre was limited. The provisions suggested for paragraph 2 of article 62 should be modified so as to provide more secure and well defined rights of access for land-locked and geographically disadvantaged States to the living resources of the exclusive economic zone. Any attempt to apply to those States discriminatory measures which would have the effect of excluding them from exploitation of the high seas and the exclusive economic zone would be detrimental to the establishment of a just and stable international legal order for the world's oceans. In that connexion, his delegation agreed with the assessment of the Chairman of negotiating group 4 contained in document NG4/10.⁴ It would, moreover, be necessary to improve the provisions of paragraph 3 of article 62 so as to minimize the adverse economic effect which would follow establishment of the limit of the exclusive economic zone at 200 miles. Also, paragraph 2 of article 70 should be drafted in more explicit terms. It was necessary to avoid inflicting economic injury on countries with limited living resources which bordered enclosed or semi-enclosed seas and which, through their geographical situation, were dependent on exploitation of the living resources of the exclusive economic zone of other States. As to paragraph 5 of article 70, he proposed that the words "or fishing industries" should be added after the words "fishing communities" in order to reproduce the words of subparagraph (a) of paragraph 3 of that article. His delegation reserved the right to revert to that question.

55. His second comment concerned the important question of the legal régime of the exclusive economic zone in relation to the well established régime of the high seas, regarding which several proposals had been made; some of those proposals reflected an extreme position which would bring the exclusive economic zone closer to a territorial sea régime and some went even further. His delegation would prefer the proposal submitted by the USSR (C.2/Informal Meeting/7) but, in a spirit of compromise, would accept the informal proposal made by the group of land-locked and geographically disadvantaged States (C.2/Informal Meeting/35).

56. His third comment related to the question of the outer limit of the continental shelf. The appropriation of ocean space through the establishment of an exclusive economic zone already constituted a phenomenon with serious implications. The extension of such appropriated zones should cease, in deference to the interests of the international community. The continental shelf was a source not only of minerals but of living resources as well. The Irish proposal concerning article 76 went too far and in no way constituted a compromise formula. It tended to accentuate inequalities and to affirm the doctrine of appropriation based on geopolit-

⁴*Ibid.*, vol. X, p. 88.

ical advantages. So far as that article was concerned, his delegation would prefer the proposal by the group of Arab States contained in document NG6/2. A compromise would have to be found, and the Soviet proposal (C.2/Informal Meeting/14) could provide one. In that spirit, his delegation, also on behalf of the delegations of Cameroon, Colombia, Iraq, Poland, Portugal and Yugoslavia, proposed that, with a view to helping delegations better to identify the different trends and consequences arising from proposals relating to the outer limit of the continental shelf discussed during the seventh session, the Conference, through the Secretary-General, should request the Intergovernmental Oceanographic Commission to prepare, in co-operation with other competent international organizations, larger-scale maps of the different regions of the world ocean. In the preparation of the maps the following proposals should be taken into consideration: article 76 of the informal composite negotiating text; the proposal by the group of Arab States; paragraphs (a) and (b) of the Irish proposal and the USSR proposal.

57. Mr. TUERK (Austria) said that, while progress had been made on certain matters considered by the Second Committee, negotiations would still have to be conducted on many important questions.

58. He said that he would offer only a few comments on the work of negotiating groups 4 and 6, but wished at the outset to observe that it was perhaps imprudent to speak, at that stage, of maximum concessions that might or would be granted, or of an acceptable minimum, because to do so would not facilitate future negotiations on outstanding major issues.

59. The compromise proposals submitted by the Chairman of negotiating group 4 (NG4/9/Rev.2) suffered from shortcomings to which he had drawn attention on earlier occasions, and he reiterated the important reservations formulated by his delegation with regard to that group's texts. Several suggestions had been made to improve the proposed provisions, notably by Iraq. His delegation regretted in particular that agreement had not been reached on a satisfactory definition of "geographically disadvantaged States" and that that expression was not used in the compromise text submitted. It also took exception to the arbitrary distinctions drawn between developed and developing countries. Despite those criticisms, it still considered that the proposed text constituted a sound basis for agreement and hoped that it would be maintained and included in an appropriate document so that it could be used as a basis for work at the next session.

60. Commenting on the work of negotiating group 6, he said it was regrettable that, despite the efforts made by many delegations, including his own, the group had not been able to make as much progress as, for example, negotiating group 4. It was, of course, necessary to work out solutions acceptable to all States, but the absence of progress in one important area should not hold up progress in another. In that connexion, his delegation had noted with interest the proposal made by Bulgaria on behalf of several delegations, which might help to clarify certain points. His delegation would spare no effort to try to find a generally acceptable solution to the very important problem of the continental shelf.

Mr. Amerasinghe resumed the Chair.

61. Mr. ARCULUS (United Kingdom) said that the representative of Denmark had already explained the position of the United Kingdom on the proposals of the Chairman of negotiating group 4.

62. With respect to the continental margin, there had for some time been wide support for the Irish formula. The study and map prepared by the Secretariat (A/CONF.62/C.2/L.98

and Add.1 and 2) had shown that the formula was practicable and represented a fair compromise. It was the only formula that could lead to consensus and thus qualified for insertion in the text that would be prepared at the current session on issues in the second category.

63. Details of the question of revenue sharing were still being considered. That question and the texts of negotiating groups 4 and 5 should be considered as a whole and not separated.

64. The Soviet Union's proposal on the continental shelf could jeopardize achievement of a consensus. It ignored the principles of international law on the geographical prolongation and was founded on a purely arbitrary figure which would lend itself to abuse.

65. Similarly, he failed to see any justification for the Bulgarian proposal requesting a study and map. The secretariat had already consulted the Intergovernmental Oceanographic Commission and other organizations in the preparation of its map and study, which was perfectly clear and explicit. The representative of the Oceanographic Commission, who was attending the meeting, could confirm that if he was authorized to make a statement.

66. Turning to the question of delimitation that had been examined by negotiating group 7, he thanked Mr. Manner for his tireless efforts to reach a compromise and noted that neither his proposals (NG7/9 and NG7/11), nor other proposals, had succeeded in achieving consensus. His delegation could not accept the provisions in the informal composite negotiating text concerning delimitation and considered that further work on the question was necessary. It was also opposed to the introduction into the negotiating text of proposals that had not been examined by the Second Committee.

67. Mr. WITEK (Poland) suggested that the representative of the Intergovernmental Oceanographic Commission might be invited to make a statement concerning the Bulgarian proposal.

68. Mr. GARDINER (Ireland) supported the suggestion of the Polish representative.

69. Mr. ARIAS SCHREIBER (Peru), referring to the report submitted by the Chairman of the Second Committee, said that, like him, he regretted that in the time available it had not been possible to complete the examination of certain provisions which still raised difficulties.

70. The Peruvian delegation was in a position to accept the proposals made in the report, which had been the subject of a consensus among the parties most directly concerned or which had received sufficient support to justify their inclusion in the integrated text, and it endorsed the statement made by the representative of Mexico at the last meeting on behalf of the co-ordinating group of coastal States. It failed to understand the statement by the representative of the Soviet Union that the adoption of the USSR amendment to article 55 (C.2/Informal Meeting/7) would perhaps constitute one of the most positive results of the session, whereas that proposal had been rejected by the great majority of participating delegations on the grounds that the exclusive economic zone did not form part either of the territorial sea or of the high seas. No less surprising was the attitude taken by certain delegations of developed States, not members of the group of Western European and other States, during the consideration of proposals designed to improve the text without changing its substance. Those delegations had raised arbitrary and unfounded objections, for example, to a change of word order in one sentence, an amendment proposed by Peru and intended to bring the provision in question into line with the language used in the same article in respect of living and non-living resources. In his delegation's opinion, such attitudes were misconceived, for they reflected an utter lack

of legal reasoning and were an insult to the intelligence of the participants. Any delegation had, of course, the right to resist proposals that conflicted with its interests, but that right should be exercised within the limits of logic and mutual respect.

71. He thanked the Chairman of negotiating group 4 for the great efforts which he had made in order to attain a consensus. His efforts had, however, encountered the opposition of some delegations during the consideration of certain proposals which would surely have facilitated an agreement between the parties most directly concerned. Peru had at all times displayed a true spirit of conciliation, going on various occasions far beyond its initial position and proposing important modifications favouring land-locked States or States with special geographical characteristics. Unfortunately, its goodwill had met with no response and, consequently, it could not accept the document resulting from the negotiations in group 4 (NG4/9/Rev.2) and, in particular, the reference to the alleged right of certain States which occurred in articles 69 and 70 and which was incompatible with the sovereign rights of coastal States recognized in article 56. The Chairman of the group had said in his report that some delegations had formulated reservations; in fact, Peru had formulated not reservations but express and fundamental objections by reason of which it could not accept the text in question. Those objections were shared by a considerable number of delegations and hence there were no grounds for saying that the so-called compromise formula had obtained substantial support which justified its incorporation in the informal composite negotiating text. The Peruvian delegation, for one, strongly opposed it. In conclusion, he endorsed the statement of the representative of Ecuador on the safeguard clause as well as the observations of the representatives of Belgium and Bangladesh concerning the proposals which they had made (102nd meeting).

72. Mr. HERRERA CACERES (Honduras) commended the Chairman of the Second Committee on his report, which drew attention to some of the informal suggestions on which there was said to be a sufficient consensus justifying the revision of the informal composite negotiating text. The inference to be drawn was that there were others which, although not mentioned, would also deserve, for the same reasons as the suggestions cited, the attention of the plenary Conference. The Honduran delegation could identify two of them: first, that submitted by the Belgian delegation on paragraph 3 of article 25 (C.2/Informal Meeting/15) and, secondly, that submitted by Brazil on paragraph 1 of article 73 (C.2/Informal Meeting/12) which had both been widely supported and which had given rise to no formal objection. Honduras too had submitted an informal suggestion concerning paragraph 2 (*h*) of article 19 (C.2/Informal Meeting/28 and Corr.1) of the negotiating text, which, with the exception of an ambiguous, unfounded comment by one delegation, had not given rise to any objection either.

73. The Honduran delegation reserved the right to revert in due course to the possible consequences of a refusal—mainly on account of one delegation's objection—to give special attention to generally acceptable informal suggestions.

74. Mr. GOERNER (German Democratic Republic) thought that the formulas contained in document NG4/9/Rev.2 reflected substantial progress compared with the informal composite negotiating text. However, they met the legitimate interests of the German Democratic Republic, a geographically disadvantaged country in central Europe, only to a very limited extent. For example, no mention was made of preferential treatment of land-locked and geographically disadvantaged States in comparison with third States. Similarly, the text restricted the access to living resources by land-locked States and States with special geographical characteristics to the exclusive economic zone of States of the

same region or subregion, which implied that there was a surplus in that region or subregion, since otherwise the text would be meaningless for the land-locked or geographically disadvantaged States. Even though, therefore, the text of negotiating group 4 was far from satisfactory for the German Democratic Republic, his delegation would nevertheless, in a spirit of compromise, be prepared to accept it as a basis for a definitive solution, on the clear understanding that it represented the absolute minimum acceptable to his country.

75. His delegation, like others, opposed the linkage between the right of access of land-locked and geographically disadvantaged countries to living resources and the Irish formula, a formula which it had not accepted for the definition of the outer limits of the continental shelf. Nevertheless, and although it had only a very small continental shelf, the German Democratic Republic was prepared, in a spirit of compromise, to accept the idea of a continental shelf extending beyond 200 miles, provided that such extension was made on the basis of clear-cut and unequivocal criteria. Furthermore, in the search for a definition of the outer limits of the continental shelf acceptable to all States, consideration should be given to all the proposals which had been submitted during the session, and not only to one of those proposals.

76. Mr. SHEN Wei-liang (China) said that, in respect of the passage of warships through the territorial sea, a proposal had been submitted by several countries (C.2/Informal Meeting/30) which had been supported by many delegations during the informal meeting of the Second Committee. He hoped, therefore, that the proposal would be taken into account in any revision of the informal composite negotiating text.

77. As to the question of the settlement of disputes, his delegation had stated its position on several occasions: the submission of a dispute to the compulsory settlement procedure must have the consent of the parties to the dispute. That position applied to all the articles in the composite negotiating text concerning the settlement of disputes.

78. With regard to the secretariat study on the continental shelf and the accompanying map, he referred to a letter dated 28 April in which his delegation had set forth its views on the subject. Among other things, it had said that the map in question contained obvious errors, that in particular the sea areas around China, as shown in the map, were neither complete nor accurate and that the actual situation of the South and East China Seas was not correctly presented.

79. Mr. NAKAGAWA (Japan) said that his delegation accepted as a basis for future negotiations the compromise proposals submitted by the Chairman of negotiating group 4.

80. With regard to negotiating groups 6 and 7, even if they had not succeeded in obtaining concrete results, he said that the discussions which had taken place in those groups would undoubtedly contribute to a future compromise.

81. Referring to the report of the Chairman of the Second Committee, he said that in his delegation's opinion the outer limits of the continental shelf should be fixed at a distance of 200 nautical miles from the baseline. If the shelf were to extend beyond those limits, such extension should be clearly delimited. In that regard, paragraph 3 (*a*) of the Irish formula was not satisfactory because a line such as that which it proposed was often difficult to trace and could therefore give rise to controversy; it was rather paragraph (*b*) of that formula which should be adopted.

82. His delegation could not accept any linkage between the solution of the problem considered by negotiating group 4 and the adoption of the Irish formula.

83. With regard to the amendment to article 66 on the fishing of anadromous stock, the change proposed represented the result of a lengthy discussion. His delegation accepted

that change as a definitive compromise formula and recommended that the new wording should be incorporated in due course in the revised text.

84. Lastly, he pointed out that the amendment proposed by his delegation, namely to delete paragraph 3 of article 121 (C.2/Informal Meeting/27), related to a question which had been under discussion by the Conference since the very beginning. The position of the countries supporting that deletion was well known. They considered that it was not right to make distinctions between islands according to their size or according to whether or not they were inhabitable. Furthermore, the Convention on the Continental Shelf⁵ made no distinction between inhabitable and uninhabitable islands. Nor did many States which had an exclusive zone of 200 nautical miles make such a distinction.

85. Mr. MAHMOOD (Pakistan) endorsed the statement of the Mexican representative concerning the interrelationship of various issues, in particular the link between the access of land-locked and geographically disadvantaged States to living resources and the settlement of disputes concerning the sovereign rights of coastal States, as well as between the issues examined by negotiating groups 4, 5 and 6, to which must be added the question of the access of land-locked countries to and from the sea and transit through neighbouring States.

86. With regard to the report of negotiating group 4 (NG4/9/Rev.2), he said that, for his delegation, the sovereign rights of coastal States in the exclusive economic zone admitted of no competing right of other States in the zone. His delegation was opposed to the imposition of any obligation on coastal States as to how they should dispose of the resources in their zone. It objected, therefore, to the text proposed for paragraph 2 of article 62, the language of which was unduly peremptory. Nor could it support the terms of paragraph 1 of article 69 or paragraph 1 of article 70. As to paragraph 3 of article 69 and paragraph 4 of article 70, it considered that the access to living resources should be limited to the surplus. It

also had reservations concerning paragraph 2 of article 70. In addition, his delegation associated itself with the request of the representative of Ecuador for the deletion of paragraph 4 of article 296 from the informal composite negotiating text (102nd meeting). As a last comment on the question of the sovereign rights of coastal States, he reiterated that there was no question of permitting the access of land-locked States or developing coastal States to the non-living resources of the exclusive economic zone.

87. With regard to various questions taken up by the Second Committee, he said that, like the Moroccan and Turkish delegations, he regretted that, owing to lack of time, not all delegations had been able to express their views on matters of particular concern to them and that it had not been possible to take up some other issues.

88. He reiterated his delegation's position regarding access and transit to the sea for land-locked countries. Pakistan considered that the access of land-locked States to and from the sea and transit through a neighbouring country constituted an infringement of the sovereignty of the transit State over its territory and therefore refused to recognize any such right. His delegation reaffirmed, on the other hand, the freedom of access to and from the sea for all land-locked countries, but subject to agreements between the countries concerned. Accordingly, it had objections to article 125 of the negotiating text and suggested that its wording should be modified after further negotiations.

89. With regard to the delimitation of the exclusive economic zone between adjacent and/or opposite States, his country's position was set out in document NG7/10, which it had sponsored with 26 other States.

90. In conclusion, he supported the proposal by Bangladesh concerning paragraph 2 of article 7, as well as the statement by the representative of Ecuador on the safeguard clause. He also endorsed the comments made by the representative of China on the passage of warships in the territorial sea, which was the subject of document C.2/Informal Meeting/30.

⁵United Nations, *Treaty Series*, vol. 499, No. 7302, p. 311.

The meeting rose at 6.15 p.m.

104th meeting

Thursday, 18 May 1978, at 8.50 p.m.

President: Mr. H. S. AMERASINGHE.

In the absence of the President, Mr. Koh (Singapore), Vice-President, took the Chair.

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 (*continued*)

1. Mr. ZELAYA UBEDA (Nicaragua) stressed the inter-relationship of the issues under consideration and regretted that it had not been possible to study them from the standpoint of the relations between them.

2. His delegation felt that the results of the negotiations on the items before the Second Committee which were presented by its Chairman (100th meeting) had been positive and his delegation considered that negotiating group 7 (see

NG7/21)¹ had established the bases for fruitful negotiations in the future. It might be possible to agree, in accordance with the proposal initially made by Norway, that the provisional rules on delimitation should have objective foundations that would ensure the exercise of the rights of third parties and would not cause one party to seek the perpetuation of a provisional solution. In view of the different shades of opinion and the various possible approaches, it might be advisable to divide articles 74 and 83 of the informal composite negotiating text² into separate articles dealing with their separate components.

3. In the context of the delimitation of maritime areas, the outer limit of the continental shelf was of great importance

¹*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. F.79.V.4), p. 124.

²*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).