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REPORT OF THE SECRETARY-GENERAL ON THE TENTH SESSION
OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA.



CM-1144

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REPORT OF THE SECRETARY GENERAL ON THE TENTH SESSION OF THE
UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Introduction:

1. By its decision during the 9th session, the 10th session of the Law of the Sea Conference was aimed at completing negotiations on all outstanding issues and formalizing the text of the Convention so that it could be signed in CARACAS (VENZUELLA) before the end of 1981.

2. Since the Conference began in 1973 it had reached agreement on hundreds of draft articles on different issues ranging from protection of the ocean environment to passage of ships through the International straits. All the texts are considered informal agreements.

3. During its 9th session the UN Conference on the Law of the Sea adopted a broad outline of its work programme for the 10th session. That programme included.

- (i) - Examination of texts approved by the Drafting Committee;
- (ii) - The rules for delimiting overlapping maritime boundaries for the Exclusive Economic zone and the Continental shelf;
- (iii) - Participation in the Convention by regional Intergovernmental organizations, non-independent territories and National Liberation Movements;
- (iv) - Arrangements for a preparatory Commission that would lay the groundwork for the machinery to be established under the Convention namely the International Sea-Bed Authority and the International Tribunal for the Law of the Sea;

(v) - Protection of Investments that might be made for deep sea-bed exploitation before the Convention became law. (Suggested by the USA delegation);

(vi) - Site for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea;

(vii) - Production Control Policies;

4. At the outset of the Conference, indeed on the eve of the opening of the Conference the United States Government announced that it has changed its negotiating team and that it intends to review all issues of the Law of the Sea Conference and consequently was not in a position to enter into any negotiations with a view of finalizing agreement on the remaining issues. This decision has resulted in the complete paralysis of the Conference for more than a week. The Group of 77 tried to secure assurances from the USA delegation to continue to negotiate at no avail. It was even difficult to get the U.S. delegation to make a formal statement on its position for the first two weeks.

5. Following the formal announcement of the U.S. position, the Group of 77 met and decided to stick to the work programme as reflected in paragraph 3 of this report.

It also decided to defer consideration of item (V) of paragraph 3 above which was originally submitted by the U.S. delegation. It was the view of the Group of 77 that the conference could not be held hostage to the wishes of one member state and that consensus could still be achieved.

6. Following the death of the President of the Conference the late Amerasinghe the Conference elected Ambassador Koh of Singapore. The election was preceded by intensive consultations which took a whole week of the time of the Conference.

7. During the second week the Conference finally adopted its work programme and allocated the items to the different committees and Plenary. During that meeting the representative of the U.S.A. informed the conference that his country's new Administration sought time to review the text of the Law of the Sea Convention before negotiations could be concluded and that this process could take a few months. The spokesman of the Group of 77 recalled the decision of the conference to conclude all substantive discussions in this session and expressed regret that the U.S.A. government has decided to review the entire text of the Convention.

8. In the light of this situation very little was achieved during the Tenth session of the Conference. The Tenth session recorded no final agreement on any of the remaining issues standing in the way of the Law of the Sea Convention. However, informal consultations were carried on all issues identified in the work programme reflected in paragraph 3 of this Report.

The Drafting Committee

9. The Drafting Committee met from January 12 to March 2 and throughout the session and continued after the Conference was ended on April 16 to April 24. The Committee's task is to: harmonize terms and texts on related subjects appearing in different parts of the Convention; ensure concordance of the text in its six official languages, and to improve the drafting where required for reasons of clarity or Law.

10. The recommendations of the Drafting Committee were acted upon in informal sessions of the Conference. The Committee is yet to start work on texts dealing with International Sea-Bed area, the preamble, parts of the text concerning definitions of terms, dispute settlement, general provisions, and final clauses. The Drafting Committee is scheduled to meet for five weeks in Geneva prior to the resumed Tenth Session to consider the above issues and report to the Conference.

Second Committee

11. The Second Committee deals with general aspects of the Law of the Sea. During this session the Second Committee held four informal meetings and conducted consultations on numerous issues. The chairman reported that there was virtual consensus that it is not desirable to reopen negotiations on basic second committee issues. During its meetings the Second Committee considered the following issues without reaching final agreement on any of them.

(i) Maritime Boundary Delimitation:

Two views are presented on this issue, one advocates the adoption of the "Equitable principle" and the other advocates the principle of "Equidistance" which calls for drawing the line midway between the Coast lines. This second principle is included in the Draft Text, and is commonly known as the Manner Text. No agreement was achieved and negotiations will continue during the resumed session.

(ii) Innocent Passage of Warships through the Territorial Seas:

A number of delegations expressed reservation on an article in the Convention dealing with this matter. These delegations favoured a change which would require the prior consent or authorization of the Coastal State for such passage. It was not possible

possible to reach agreement even on setting a working group on the question.

(iii) A number of proposals were presented in the Second Committee but no agreement was reached on any of them. These proposals included:

- (a) - the Establishment of a Common Heritage Fund to assist developing countries particularly the least developed.
- (b) - the rights of Land-locked and Geographically disadvantaged states in the exclusive economic zone. The proposal aims at clarifying the text to ensure the rights of Land-locked countries to living resources. During the discussions of this issue two African delegations suggested that the idea of regional or sub-regional economic zones be considered.
- (c) - other proposals dealt with protection of fish stocks straddling the exclusive economic zone and the high seas, semi enclosed seas, unauthorized broadcasting from high seas and the removal of installations or structures in the Exclusive Economic Zone.

The First Committee:

12. The first Committee deals with issues relating to the International Sea-bed area and Institutional machinery. The Committee dealt with the following issues during the Tenth Session:

Plans for a preparatory Commission to make arrangements for the machinery that would be set up under the Convention, the effects of the Sea-bed Production Control formula in the draft Convention, the costs of the future authority and the site of the International Sea-bed Authority.

13. It would be recalled that the group of 77 has refused to conduct negotiations on the proposal of the United States dealing with "protection of Investments that might be made for deep sea Exploitation before the Convention became Law" until the United States has completed its review.

14. Preparatory Commission

The discussions on the establishment of the Preparatory Commission to prepare the way for the bodies established under the Convention, notably the International Sea-Bed Authority and the International Tribunal for the Law of the Sea was carried on the basis of a draft resolution prepared by the late President of the Conference. The draft resolution stipulates that the Preparatory Commission would make arrangements for convening the assembly and the Council of the authority, as well as the tribunal. Besides having the traditional organizational functions of a preparatory commission, it would be empowered to prepare and adopt draft rules, regulations and procedures for the mining of the deep sea-bed beyond national jurisdiction, so that the authority would be able to initiate activities in the area once it came into being. It would be composed of all states that signed, ratified or acceded to the Convention.

15. The Chairman of the Committee reported that agreement that the Commission should be established by a General Assembly resolution, seem to be secured. He also indicated that there was general recognition of the Commissions objectives. No agreement was reached on the membership of the Commission, the process of decision making or the financing of the Commission.

Production Control

16. The first Committee discussed this matter during its consideration of the Secretary-General's report on "Effects of the Production Limitation formula under certain specified Assumption" (Document A/Conf.62/L.66). The Production Limitation formula is a device aimed at encouraging the production of minerals from the International Sea-bed area while minimizing the economic damage to land based producers of the same minerals. The formula allocates 60% of the increase in demand for Nickel, Copper and Manganese to sea-bed production leaving the existing market plus 40% of the projected increase in demand to land-based producers. There are also limiting provisions and a safeguard clause intended to protect both sea-bed and land-based producers from situations of unusually low and high market demand.

17. The delegations of Zambia, Zaïre, Zimbabwe and Gabon strongly criticized the report and the formula. They maintained that the report and formula did not adequately show the catastrophic effects of sea-bed mining on their economies. The above named countries prepared and circulated to the African Group and later to the Conference a critique of the Secretary-General's report as well as amendments to be incorporated in the text of Article 151 of the Convention which would protect their economies.

18. Intensive Consultations were informally carried during the session. The delegation of Canada proposed the establishment of a group of Experts to study the Secretary-General's report and present its findings to the Committee. This proposal was supported by the African land-based producers. A number of delegations felt that the issue should continue to be discussed in the first Committee. It was finally agreed to postpone consideration of the matter to the next session.

19. The African group in its turn considered this matter and established a group of 12 to study all issues of production limitation policies and report to the Group. It was not possible for the Group of 12 to finish its work before the end of the session.

Site of Authority

20. The three candidates for the site of the authority Jamaica, Eudji and Malta continued to present their case to the first Committee. Many African delegations participated in the debate and many of them reiterated their support to the decision of the Group of 77 to endorse the candidature of Jamaica which was presented in 1974. However, the negotiations were not conclusive and the issue was postponed to next session.

21. The African group also discussed this matter in one of its meetings and there was no consensus in the Group. It was generally agreed that the three concerned developing countries should negotiate the matter among themselves with a view to arriving at an amicable solution. It was finally decided by the conference that the matter be considered during the third week of the resumed 10th session.

22. The question of the site of the International Tribunal for the Law of the Sea for which the Federal Republic of Germany, Portugal and Yugoslavia have presented offers to host have also been postponed till the 3rd week of the Resumed 10th Session.

The Third Committee

23. The third Committee is assigned the following topics:

- the Protection and Preservation of Marine environment;
- the Conduct of Marine Scientific Research;
- the Development and Transfer of Marine Technology.

The Committee has completed its substantive negotiations during the resumed Nineth Session in Geneva. The Committee held one meeting to ascertain that agreement on the text was still holding. This was reiterated by delegations and no further meetings were held.

24. A Draft Resolution on Marine Science Development was presented during the 10th Session by the Group of 77. It was agreed that the draft which enjoys a wide support should be considered by the resumed session to allow the General Assembly to endorse it during its next regular session.

Participation in the Convention

25. The Participation in the Convention by regional inter-Governmental Organizations, non-independent States and National Liberation Movements was the subject of one informal debate in Plenary and many private consultations among interested countries organized by the President. Proposals that the National Liberation Movements recognized by the United Nations and Regional Organizations including SWAPO, ANC, PAC, and PLO be admitted as signatories were presented to the conference. Members of the European Economic Community asked that that Organization be enabled to adhere to the Convention in regard to fisheries and other matters for which it is competent. No decision was arrived at and consultations will continue during the resumed session.

26. The OAU Secretariat have requested the African Group to investigate the possibility of requesting that the OAU be admitted as signatory of the Convention.

Preliminary discussions in the Africa Group indicated lack of readiness of the Member States to discuss the issue during the 10th session. Many delegations wanted to be clear about the legal and political ramifications of such a request before they consider it. They also maintained that they had no instructions on the matter.

Activities of the African Group

27. The African Group held a number of meetings during the 10th session. The Group re-elected the Representative of Liberia as its Chairman. The Group continued to press for high level and continuous representation of the OAU Secretariat in all its meetings. This was not possible to comply with due to the staff shortages of the New York Office and the numerous meetings in the United Nations Headquarters.

28. The Group established two working Groups which were meeting at the same time and did not have Secretariat services. In its last meeting the Group instructed its Chairman to request the OAU Secretary-General to include an item on the Law of the Sea in the Agenda of the Thirty-seventh Session of the OAU Council of Ministers and to invite all Member States to include in their delegations experts on the Law of the Sea so that the Council could take political decisions to expedite the conclusion of the Conventions. They also requested the OAU Secretariat to ensure full and continuous servicing of the African Group in the Law of the Sea during this crucial stage.

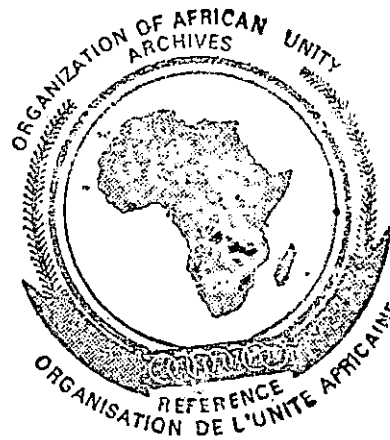
Conclusions and Comments

29. It was apparent from the start that the Tenth Session of the Law of the Sea was doomed to failure as a result of the United States position. It is important that the next session scheduled for August 1981 should not face the same fate of the 10th session. It would be recalled that the United States delegation has indicated that their delegation would not have finished its review by that time and requested that the session be postponed till early 1982. This request was rejected by the Group of 77 which maintained that if the United States Government had the political will it should be ready to negotiate in good faith in

August 1981. It is therefore imperative that every effort should be mobilized to bring the United States to the negotiating table to conclude the Convention. Many African Countries have continuously maintained that they could no longer support the costs of any further delays.

30. African Countries should participate fully in the work of the resumed 10th Session and particularly the Drafting Committee to ensure full protection of their legitimate rights.

31. The OAU Secretariat should be authorized to service fully all the meetings of the African Group during this final stage. Particularly since the remaining issues are highly sensitive and would require political decisions on the part of the OAU highest organs.



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