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REPORT OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The Seventh Session of the third United Nations Conference on the Law of the Sea was opened on 28 March 1978 at Palais des Nations, in Geneva.

Since the Sixth Session was held under trying circumstances in New York and since major concessions were by the Third World at this session with a view to reaching an agreement; it was expected the Seventh Session would be a decisive one. Some Western countries even declared that the Geneva Session would lead to a final agreement. We should perhaps see in this over optimism the idea that the maritime powers were convinced that developing countries would quickly give up, tired as they were of long and fruitless sessions.

In fact, the Seventh Session was disappointing and witnessed an ever widening gap between participants in general and developing countries in particular.

Nevertheless, it may generally be said that the Seventh Session of the United Nations Conference on the Law of the Sea marked the ratification of the Single Informal Negotiating Text. Negotiations went on eagerly until the end of the Conference and it was impossible to reach a general agreement, an agreement which would be a compromise of all those concerned, there by, going beyond the scope of the Single Informal Negotiating Text. Deliberations therefore went on with a topical Single Informal Negotiating Text on the one hand and on the other, with a large number of amendments and proposals on which the Conference was yet to give a definite opinion.

1. The problem of chairmanship

The Conference got involved in a legal and procedural battle during the first two weeks.

It is to be recalled that Ambassador Shirley Amerasinghe of Sri Lanka had been elected to the chair of the United Nations Conference on the Law of the Sea. The Government of Sri Lanka, on account of their internal policy and the important political changes which took place as a result of the elections at home, informed the Conference that Mr. Amerasinghe was no longer a member of the official delegation. An opportunity was thus offered the Latin American Group to settle accounts with the Asian Group. It is to be recalled that the latter took over from the former, the chairmanship of the Conference on the Law of the Sea (while Latin America expected to elect Mr. Aguilar at the Caracas Session in 1974) and of UNCTAD after the retirement of the Latin American chairman.

The Latin American Group, consequently made capital out of the legal agreement that one cannot officiate as a chairman without first being a member of an official delegation and requested the resignation of Mr. Amerasinghe and the election of a new chairman.

The Asian Group argued that Mr. Amerasinghe was to chair the Conference until the end and a change in his status at the level of his country's diplomatic and administrative structure was not adequate enough as an argument to relieve him of his office.

Africa found itself in a particularly embarrassing situation, divided as it was between its two partners of the Third World. The African Group left no stone unturned in bringing together the Asian and the Latin-American Groups. But taking into account the firm positions of both, it became necessary to act realistically. The African Group then took into account all the components and waves of thought prevailing at the Conference and finally decided to support Mr. Amerasinghe.

This problem which, apparently, is a minor one, is in fact very serious if its immediate and long term implications are taken into consideration.

a) With respect to the immediate consequences, the divergences between the members of the Group of Seventy Seven were brought to light. The already existing split widened considerably and it is to be feared that the spirit and principles which directed the establishment of the Group of Seventy-Seven may gradually become dead letter.

   It is true that during the recess period, the Western countries exerted a strong pressure on our partners and it was not surprising to see some Latin-Americans take a stand which differed from ours and compared dangerously with that of developed countries.

b) This problem nearly led to the revival of the divergences existing among the members of the African Group. In discussing the attitude to be adopted by the members of the African Group,

it became clear that there would be disagreement between Africans on certain issues. Very fortunately, our appeal to group unity and solidarity was heard and the African Group was able to pull itself together and act jointly as it usually does when it becomes necessary.

The problem of chairmanship remained in the long run a point of disagreement likely to delay considerably the proceedings of future sessions.

This was evidenced by the bitterness of the discussions when it came to deciding whether the next session would be the Eighth Session or the continuation of the Seventh, taking into account the time wasted in Geneva.

II. Organization of work

In an attempt to make headway, the Conference decided to establish the following seven groups as indicated in document A CONF/62/62:

1. Resources exploration and exploitation regime and policy;
2. Financial arrangements;
3. Organs of the authority;
4. Right of access of land-locked and geographically disadvantaged states to the living resources of the exclusive economic zone;

5. Settlement of the disputes connected with the exercise of the sovereign rights of the coastal states in the exclussive economic zone;

6. Definition of the outer limits of the continental shelf;

7. Delimitation of the territorial sea between states with opposite or adjacent coasts and settlement of the disputes related to it.

The first three items fall within the province of the First Committee, the settlement of disputes within that of the Third Committee and items 4, 6 and 7 within that of the Second Committee.

Besides, there were three other items included in the agenda for study but these items were not assigned to any working group. They were:

- the regime of islands;
- closed and semi-closed seas;
- preamble and final provisions of the convention.

III. Real proceedings

As we have already said in our preamble, the Seventh Session of the Third United Nations Conference on the Law of the Sea has beer the ratification of the Single Informal Negotiation Text.

With the exception of the Third Committee, which ended its work about one week before the closure of the Session and which agreed on a final text, negotiations in other committees were close and marked by a bitter tone and rigid attitude. It was therefore impossible, excluding the

Single Informal Negotiating Text, it was therefore impossible to agree on an acceptable compromise. The result was negotiations took place within the very framework of the Single Informal Negotiating Text which in the long run was, apparently, very olose to the final text of the Convention.

In fact, it may be said that the essential questions were not dealt with in this Session. These questions involve certain realities which cannot be gain said and which bear on much more important interests that it should be easy to make concessions, so long as the consequences, would determine, the future of the economy of the all the parties concerned.

The negotiations therefore took the form of technical discussions and the positions already known were re-asserted.

The participation of the General Secretariat in the Conference being limited in time, an attempt will be made to sum up the results obtained on some of the most important points.

Resources exploration and exploitation regime and policy.

Major concessions were made by developing countries to the maritime powers at the Sixth Session in New York: namely the acceptance of the parallel system. It will be recalled that the Third World in general and Africa in particular have been fighting for the principle of the oneness of the international area as the expression of the concept of the common heritage of mankind since the beginning of the Conference. Basing our arguments on the OAU Declaration on the Law of the Sea and resolutions which stressed the indivisibility of the area, we have constantly rejected the idea of the parallel system as favouring developed countries to an intolerable extent. The rigid attitude adopted by the

developed countries on the parallel system and that adopted by developing countries on the principle of indivisibility were leading the Conference to a failure with all the consequences involved; a major concession was therefore made by the Third World by accepting the parallel system on condition that three preliminary conditions be accepted by developed countries namely:

- financing;
- transfer of technology;
- revision of the clauses of the convention within a reasonable time limit.

It was noticed from the beginning of the Seventh Session that there was a tendency for developed countries to keep to the parallel system and do everything to acquire more concessions from developing countries: thus taking every substance from the three conditions presented to the Sixth Sexxion. In other words, an attempt was being made to impose, a parallel system which will make the tecnically advanced states with the advanced technology, the material and financial means at their disposal, compete with an inexperienced Authority lacking the financial means and the technology necessary for the exploration and exploitation of resources.

It can clearly be noticed that the present results constitute an important backward movement in relation to the hopes engendered by the concept of the common heritage of mankind. It was also clear that the developed countries accepted the system expressed in the Single Informal Negotiating Text only as a provisional arrangement the formality of which would only ensure the existence of the parallel system. In other words, not only the unitary system which guaranteed the exploitation of the common heritage of mankind

equitably and in the common interest of mankind was rejected, but the counterpart requested by the developing countries with a view to guaranteeing a balance of the interest of the two worlds might be a dead letter if attention were not paid to it.

From another point of view, we saw in the Authority the means through which developed countries and multinational corporations can control the exploitation of the seas and the structure through which financing sources can be found and the transfer of technology achieved. But it appeared that the technically advanced countries were not only making an attempt to alter constitution of the Council but to make sure also that decision making in the Council did not depend on a simple majority.

The Seventh Session confirmed, in short, all our fears namely the disintegration of the very substance of the concept of the common heritage of mankind and the refusal to translate into deeds the establishment of a new world economic order. Accepting a parallel system without seeing to it first that the conditions imposed were fulfilled was in our considered opinions, the end of every hope placed by the developing countries in the equitable exploitation of the common heritage of mankind. The establishment of a system of exploitation of the international area in the interest and for the equitable benefit of all and no longer with the view to increasing the wealth of the rich to our deteriment would have the ideal basis for and the stepping-stone to the establishment of a real new international economic order. We were compelled to observe, as we had already asserted on several occasions, that the declarations of good intent of the great powers hardly conceal their will to preserve their advantages and to prepare the ground for an increased, and thereby, dangerous activity of the multinational corporations in which they find a neo-colonial tool of the exploitation of areas in which the interests of the Third World should be given a priority.

B. Settlement of disputes

The problem raised by the settlement of disputes was certainly one of the most complex the conference had to study first, because viewpoints differed according as the state involved was a coastal or a land-locked state and secondly because, every solution to this problem should take into account the constitutional clauses obtaining in some countries.

There were, in fact, two important waves of thought: the first was mainly defended by the littoral states which considered that the areas fell exclusively within the province of the littoral states which controlled it; the second wave was that of land-locked states,it pointed out that disputes should be preferably be settled by an international authority. On the whole the constitutions of African and some non-African countries contain a clause dealing with the exclusive economic zone. These clauses stipulate that the exclusive economic zone entirely belongs to the exclusive sovereignty of the state concerned. Every impairment of or limit to the national sovereignty, whatever may be their form or extent is inacceptable.

The third committee and consequently, the conference as a whole succeeded in reaching an agreement under which disputes must be settled compulsorily only through conciliation. This agreement excluded therefore the recourse to the International Court of Justice, to an arbitration or to an eventual tribunal.

This result which satisfied every one interfered in no way with constitutional measurs, although it admitted the principle of a compulsory settlement on a very minor scale and left to the discretion of the states concerned the choice of the way disputes should be settled or of the mutually

acceptable third parties to which they could appeal. This is perhaps the only positive result achieved by the Seventh Session without much difficulty.

4. Right of Access of Land-Locked and Geographically Disadvantaged States to the Living Resources of the Exclusive Economic Zone.

This particular item would not have created additional difficulties among the members of the African Group if they had kept to the OAU Declaration on the Law of the Sea. In fact the only problem raised withrespect to the Unity of the African Group concerned on the right of land-locked states to exploit the non-living resources of the area. The Declaration of Addis Ababa specifically requested that the right of access of land-locked state to the Sea and their right to exploit living resources on the same footing as nationals of coastal states should be included in the future convention. The land-locked countries asserted that by refusing them the right of access to non-living resources, the OAU Declaration did not do them justice. This divergence among the members of the African Group constituted a real danger for the Group's unity of action.

Since 1974, the delegation of the General Secretariat has been recommending that the African Group sticks to the terms of the OAU Declaration and acts jointly in the interest of Africa as a continent regarding the immoderate appetite of developed countries; the problem of non-living resources should be considered within the scope of the OAU and its solutions based on inter-African cooperation.

We proposed a realistic approach, so true it is that at the level of the conference as a whole, it was difficult to

accept the requests of land-locked countries by the mere fact that the number of votesin other regions where the number of land-locked countries is particularly low in relation to the number of zone-locked countries in Africa.

The problem because still more complicated with the emergence of two new ideas at the Seventeenth Session.

a) While the OAU Declaration grants large possibilities of participation of land-locked states in the exploitation of living resources, the notion of surplus resources was introduced by the delegation of Argentina. In other words, the land-locked countries can only be allowed to exploit the living resources of the exclusive economic zone if there is a surplus. Some African delegations adopted this position which reduced considerably the right given to land-locked countries.

   Other delegations considered that this new idea limited to a very great extent the rights given to land-locked countries by the Declaration of the OAU, all the more, as the costal states were not in a position to determine whether there was a surplus or not.

b) There were in the African Group littoral states on the one hand and land locked and geographically disadvantaged states on the other. Some delegations in our group raised the problem of the definition of geographically disadvantaged states at the Seventh Session. Until this session, the concept of geographically disadvantaged states was unreservedly admitted. Some delegations

raised the problem of the definition of what is called a geographicaly disadvantaged state at the Seventh Session.

It does mean that the African Group is increasingly facing problems of national interests and legal definitions which should be settled within the framework of our Organization so as to avoid confrontations between African delegations at plenary meetings or in the committee of the conference.

A particular chapter should be devoted in our conclusion to this serious problem.

C. Delimitation of the continental shelf between opposite or adjacent States:

The OAU should pay a particular attention to this problem since, it is a problèm which existed, to some extent between African Countries, but to a greater extent between African countries on the one hand, and non-African countries on the other.

This problem was particularly serious in the northern area of Africa where the ambition of the European powers and of all the former colonial powers on the whole might deprive our continent, through some member countries of the OAU of the maritime wealth to which Europe would treat itself. In the Eastern part of Africa, France's seizure of such islands as Mayotte, Europa, Iles glorieuses, juan de nova, Bassas da India and others which lawfully belong to Africa to the detriment of OAU Member States, indisputably deprive the Comoros, Madagascar, Mozambique and therefore the continent, of resource which are lawfully hers. Beyond return policy problem of these islands to the African continent,

the policy of force leads France to draw unilaterally what it consider its natural sea frontiers. Much can also be said on the north of the continent on the ambitions of Spain, France and Italy with respect to the economic zone as regards such African countries as Algeria, Lybia, Morocco and Tunisia. Lastly, the continous occupation of the Canary Islands by Spain can only impair the interests of the coastal African countries in this region.

Africa should therefore see to it that sea frontiers are demarcated according to the basic principle of equity. If this principle were admitted and included in the convention, developed countries would be compelled to base the definition of their frontiers no longer on the principle of equidistance which would favour them considerably, but rather on that of the equitable distribution of the sea resources according to the wealth and development of all. Only the principle of equity could ensure African states a fair distribution of the sea wealth, and this without prejudice to the political status of the islands legitimately claimed by the African continent.

D. Regime of Islands and Closed and Semi-closed Seas

This item is mainly connected with the previous problem. Closed and semi-closed seas such as the Mediterranean Sea raise a particular problem which, generally, deserves the attention of Africa. It seems to us that for economic reasons and for the security of the northern and north-eastern parts of the continent, all African States should be concerned about the fate of the OAU Member States in these regions.

All African States should continuously take counsel together behind the member states of the OAU for which the problem of closed or semi-closed seas is a serious matter

of concern since the weakening of their position with respect to the non African States in these regions would generally weaken the position of Africa as a whole. The problem should be considered from two points of view with respect to the islands:

a) It is obvious that the African approach to the problem of sea-locked or archipelagic states should be defined in terms of the vital interest of those OAU sea-locked states whose insular position does not protect them from the politico-strategic or economic ambitions of the wealthy countries.

b) The decision of such former colonial powers as France, Spain and Britain which are still yearning in many respect for their former colonial empires, to create an exclusive economic zone around the islands and small islands they kept by force is a dangerous component of imbalance between rich and developing countries in the context of the establishment of a new world economic order. The problem of islands in the Mozambique Channel is a clear example not happy to deprive Madagascar and the Comoros of the islands which should legitimately fall under their sovereignty, France arrogate to itself the right to constitute around them an exclusive economic zone. This attitude entails a twofold consequence. First by a sheer dint of strength and in defiance of the principles of international law and those governing decolonization in the context of the Charter of the United Nations, former colonial powers deprive

African States of things which legitimately belong to them. In addition, countries like Mozambique and Madagascar, just to mention these ones, have seen by this action of a colonial power their rights of exploitation of ocean resources considerably reduced. The second consequence is the grasp of vast areas of the Ocean by former colonial powers through basically illegal astuteness. This in the long run strengthened their economic potential to the prejudice of developing countries.

Thus, France which already has a vast economic zone on three sides of its hexagonal territory increased this zone two times or more by establishing other zones around the islands which still depend on its sovereignty. As we have already seen, this was achieved by the mere law of the policy of strength.

Africa cannot remain indifferent to the status to be given to islands since this status deprives the continent of what lawfully belongs to it. If former colonial power should still have a hold on African island in defiance of the progress of history, Africa can only request that these islands be not submitted to the general status of islands to the prejudice of the higher interest of our continent.

Conclusion:

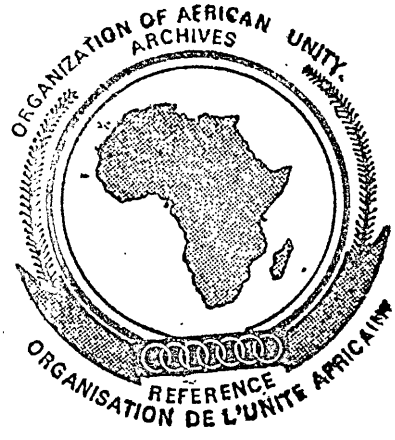
The Seventh Session gave us the opportunity to unveil the true game of developed countries. The declarations of intent and the statements of policy the finality of which is to call in question a Third World decision to defend its interest failed to conceal the real objectives of the great powers.

These powers are clearly aiming at a forumof the colonization of the seas and oceans so as to ensure a predominance which would guarantee the advantages and the monopoly of the wealthy world and of the multinational corporations with respect to the developing world condemned to depend on them. Africa more than ever before, has to prove its unity and solidarity so as to defend its long term intest with respect to the developed world. It seems to us that the African Group should essentially agree on the contents to be given to the OAU Declaration on the Law of Sea. In fact, if we are all willing to base our action on the declaration, some delegations for various reasons criticised and sometimes questioned this same declaration. It seems to us that it is not right that the OAU Declaration should be considered with some reserves and questioned in the lobby, even implicitly during proceedings in committees. If the 1974 Declaration does no longer satisfy some delegations, given the evolution of the conference, the Organization of African Unity is the only organ in which this Declaration should be discussed, if need be. The next meeting of the Council of Ministers should offer those delegations which are not satisfied with the provisions of the Declaration the opportunity to expose their view points so as to modify, amend or enrich the OAU Declaration.

The essential thing is that the provisions of this Declaration be discussed among Africans in the most straight forward way. Mention should no longer be made of the real or supposed weakness of this Declaration at the next Session of the Conference on the Law of the Sea.

The OAU Declaration as it is, or will possibly be amended, should be, for each African delegation, the platform of action which should guide policies of African delegations. At any rate, there should not be a formal acceptance of the Declaration of our Heads of State in the organs of the OAU,

while this same Declaration is criticised and reserves formulated towards it in other force. Taking into account the experience of the six preceding sessions, the time has come for the whole of Africa to reconsider the situation and mobilize itself around a common satisfactory platform which would reflect our concerns and our will to act in the general and higher interest of Africa with respect to the great powers of this world.



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Report of the United Nations Conference on the Law of the Sea

Organization of African Unity

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