THE RIGHT OF LANDLOCKED STATES TO PARTICIPATE IN THE DEVELOPMENT OF MARICULTURE

Introduction

1. For a number of converging reasons, mariculture, i.e., the use of ocean space for the culture of marine plants and animals, is likely to assume far greater importance during the next few decades than it has had in the past. The new Law of the Sea itself will reinforce this trend by making distant-water fishing increasingly costly and unprofitable except for a few highly developed maritime States. One of the consequences will be an intensification of efforts by coastal States to exploit their own coastal waters. This, in turn, will accelerate the already ongoing shift from capture to culture fishery.

2. This imposes a revision of the categories of marine resources. The category "renewable" or "living" resources must be divided into

   -- natural resources; and

   -- cultured resources.

   These must be governed by different regimes.

3. (a) The rights of landlocked States to participate in the exploitation of the natural renewable resources of the economic zone of coastal States are defined in Article 69 of the Composite Text.

   (b) New articles are needed to define the rights of landlocked States with regard to cultured resources. Under clearly defined conditions, the landlocked States must have the right to partipate in the development of mariculture in ocean space under the jurisdiction of coastal States.

4. By using part of a designated zone for the purpose of mariculture, the landlocked States does not touch on existing, renewable resources over which the coastal State has sovereign rights. Cultured resources are new resources, which cannot be included among the natural resources, whether living or nonliving, of the seabed and subsoil and the superjacent waters, over which the coastal State has sovereign rights according to Article 56 (1); nor is mariculture related to the "other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds" over which the coastal State also has sovereign rights.

   Mariculture activities should instead be included under (1) (b)(i) of Article 56, "the establishment and use of artificial islands, installations and

structures," over which the coastal State has jurisdiction, not sovereign rights. The right of landlocked States to maricultural activities is compatible with coastal-State jurisdiction, and must be assured.

ADDITIONS TO THE COMPOSITE TEXT TO DEAL WITH THE EMERGENT REQUIREMENTS OF MARICULTURE AND THE RIGHT OF LANDLOCKED STATES TO PARTICIPATE IN ITS DEVELOPMENT

Article 56 (1)(b)(i) should read

the establishment and use of artificial islands, installations and structures, including installations and structures for the culture of marine plants or animals (seafarms);

New Article 68 A:

1. Landwards of the outer limits of the exclusive economic zone, the coastal State may designate certain areas as mariculture areas for the farming of marine plants or animals. Before designating such mariculture areas, the coastal State shall refer proposals to the competent international organization with a view to their adoption. The international organization may adopt only such mariculture areas as may be agreed with the coastal State, after which the coastal State may designate them.

   Comment: this paragraph is drafted in analogy to the articles on the establishment of sealanes.

2. Mariculture areas may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or to cables or pipelines already in position and their repair.

   Comment: Corresponding modifications may have to be made in the articles on navigation and on cables and pielines.

3. Coastal States which intend to undertake mariculture projects landwards of the outer limit of the exclusive economic zone shall, not less than six months in advance of the expected starting date of the project, provide the appropriate international organization with a full description of:

   (a) the nature and objectives of the project;

   (b) the technologies to be used;

   (c) the precise geographical areas in which the project is to be carried out;

(d) the duration of the project

(e) the projected volume of production;

(f) the name of the institution or enterprise undertaking the project.

The international organization must approve the project, or return it with its amendments, within... months.

4. The international transport of plant seedlings, sporophytes, fish fry, fingerlings, spat, or any other living organisms and their introduction into the water or unto the seabed landwards of the outer limits of the exclusive economic zone is subject to standards and regulations adopted by the competent regional or global international organization or other pertinent international agreement.

Comment: Paragraphs (3) and (4) are necessary since mariculture projects may alter the ecology of a whole region or subregion, across the limits of national jurisdiction. Paragraph (3) is drafted in analogy to Article 249; Paragraph (4) is in accordance with Article 197, which applies to any part of the marine environment.

4. Where mariculture developments affect beneficially an entire subregion or region, arrangements for suitable financial or other contributions by other States in the region to the State carrying out the project shall be made through the competent regional or global international organization.

Comment: A provision ofthis kind is necessary to encourage the development of the "ranching" type of seafarming operations, where one country may release millions of fingerlings of a valuable species of fish without the guarantee of any returns.

New Article 69 A:

1. Landlocked States shall have the right to engage in mariculture activities in the waters and on the seabed landwards of the outer limit of the exclusive economic zone of a coastal State.

2. Such activities shall be limited to mariculture areas designated by the coastal State in accordance with Article 68 A (1).

3. Landlocked States which intend to undertake mariculture projects landwards of the outer limit of the exclusive economic zone of a coastal State shall, not less than

six months in advance of the expected starting date of the project, provide the appropriate international organization with a full description of:

(a) the nature and objectives of the project;

(b) the technologies to be used;

(c) the precise geographical area inwhich the project is to be carried out;

(d) the duration of the project;

(e) the projected volume of production;

(f) the name of the institution or enterprise undertaking the project.

The international organization must approve the project, or return it with its amendments, within...months. Such approval must include the approval of the coastal State under whose jurisdiction the project is to be carried out.

4. The coastal State shall have a right to participate, through joint ventures or other suitable joint arrangement, in mariculture projects carried out landwards of the outer limits of its economic zone.

Comment: The final provision of paragraph (3) is based on the same principle as Article 248. Paragraph 4 is intended to offer economic benefits to the coastal State under whose jurisdiction the project is carried out.

PLENUM: DISPUTE SETTLEMENT

5.Infommal Meeting, 9.8.a.m.,Vorsitz Evensen

Art.8(Fortsetzung der Debatte)

Alle Teilnehmer (Portugal,Kanada,Griechenland und Indien) erhoben Bedenken gegenueber dem System der special procedures.

Indien und Portugal aeusserten Praeferenz fuer Schwergewicht bezw. Ausschliesslichkeit des zu schaffenden Tribunals, das verschiedene Kammern umfassen sollte.

Kanda meinte, dass das System der Sonderverfahren nicht denselben Status haben sollte wie "arbitration proper".

Griechenland wies auf die Zusammensetzung der Sonderkomitees aus technischen Experten hin, es sei aber auch eine rechtliche Qualifikation noetig

Die Diskussion ueber Art.9 wurde vom Vorsitzenden - im Hinblick auf Arbeit der 1. Kommission - ebenfalls als preliminaer bezeichnet.

El Salvador sprach sich fuer die Wahrung der lit.a bis c von Abs.1 bei Streichung der Alternative d (special procedures) aus. Im Grunde genommen sollte es nur 2 Systeme (judizielles gem. a oder b oder schiedsrichterliches gem. c) geben. Sonderverfahren koennten keine gleichwertige Alternative darstellen, es sei gem. der Zusammensetzung eine rein technische Instanz, Rechtsanwendung sei jedoch ohne Rechtsauslegung, fuer die die Voraussetzungen nicht gegeben sind, undenkbar. Fuer die Alternativen a bis c sei die technische Seite durch Art.11 ausreichend gedeckt.

Spanien wuerde Alternative b (IGH) oder c(Schiedsgerichtsbarkeit) bevorzugen und aeusserte hinsichtlich d die gleichen Bedenken wie der Vorredne

Rumaenien aeusserte Praeferenz fuer c, trat gegen die Schaffung eine Tribunals (a) ein und hat Vorbehalte betr. d, da die Sonderkomitees nicht in der Lage waeren, alle Fragen zu loesen.

Frankreich wuerde eine obligatorische Schiedsgerichtsbarkeit bevorzugen, lehnt die Schaffung eines Tribulnals ab. Auch der IGH sei weniger geeigne da à priori geschaffen und daher nicht entsprechend zusammengesetzt. Es schlaegt eine Abaenderung von Abs.7 vor, wonach im Falle mangelnder Einigung ueber das anzuwendende Verfahren der Streitfall nur vor ein Schieds-

PLENUM:DISPUTE SETTLEMENT

6.Informal Meeting, 10.8.a.m., Vorsitz Evensen

Fortsetzung der Debatte ueber Art.9:

UdSSR tritt fuer Abs.1 in seiner derzeitigen Fassung ein, von der Wahrung aller dieser Wahlmoeglichkeiten haenge die Annehmbarkeit des gesamten Teils IV fuer die UdSSR ab. Fuer die sozialistischen Laender komme nur Alternative d wirklich in Frage, da sie am wenigsten die nationale Souveraenitaet begrenze. Obligatorische Gerichtsbarkeit (IGH) als ausschliessliche Methode sei - im Hinblick auf die geringe Zahl derer, die sich ihr unterworfen haben - offenbar unpopulaer und daher unrealistisch. Das gleiche gelte fuer ein Tribunal, dessen Zusammensetzung ueberdies noch unvorteilhafter fuer die sozialistischen Staaten waere.

Ecuador ist fuer eine freie Wahlmoeglichkeit unter gleichwertigen Alternativen, aber gegen die Proliferation der Systeme. Es wuerde einem Tribunal den Vorzug geben, dem IGH stuenden die Entwicklungslaender (vorbehaltlich einer Statutenaenderung hinsichtlich Zusammensetzung) misstrauisch gegenueber, in einem Schiedgericht waere ein adaequate Vertretung von Entwicklungslaendern (mangels qualifizierter Experten) in Frage gestellt. Ecuador ist fuer die Integration der Sonderverfahren in das allgemeine System ((Streichung von Abs. 1 lit. d und Abs.2), die uebrigen Alternativen a bis c sollten in dieser Reihenfolge erhalten bleiben.

Brasilien aeusserte sich fuer die Streichung der Alternative d (Rechtsanwendung ist von Interpretation nicht zu trennen und die den Leitern der internationalen Sonderorganisationen zugedachte Rolle ~~sei~~ zu bedeutend d.h. die Integration der Sonderverfahren in das allgemeine System.

Die Schweiz ist fuer ein materiell moeglichst umfassendes und obligatorisches Streitschlichtungssystem (ob judiziell oder schiedsrichterlich). Art. 9 sei im Prinzip akzeptabel, doch waere eine Proliferation der Organe zu vermeiden. Die Notwendigkeit eines Tribunals ist nicht ersichtlich, der IGH sei ausreichend.

o waere -

gericht gebracht werden koennte. Auch Abs. 3 waere entsprechend abzuaendern.

Madagaskar brachte die Position der "77" vor: Streichung der Alternative d und des Abs.2 (Integration der Sonderverfahren in das allgemeine System). Von den Moeglichkeiten a bis c sollte c der Vorrang gebuehren, es folgen sodann a und b.

Tunesien aeusserte Praeferenz fuer die genannte Integration und daher Vorbehalte zu Abs. 1 lit d und Abs.2.

Grossbritannien betonte die Notwendigkeit einer "Endgueltigkeit"(finality) und Effektivitaet (einschliessend umfassenden Charakter) eines Streitschlichtungssystems fuer die Rechtssicherheit. Die Schaffung eines Tribuna waere - im Hinblick auf die effektive IGH-Taetigkeit i.G. - ueberfluessig, kostspielig und im Hinblick wuerde sich hinsichtlich acceptibility das gleiche Problem wie beim IGH ergeben. Obligatorische Schiedsgerichtsbarkeit(In Ergaenzung zum IGH) waere die beste Loesung, allenfalls koennten Bedenken hinsichtlich des Zeitfaktors durch eine "geringsfuegige Institutionalisierung" des Schiedssystems (z.B. interim panels zur Vorbereitung oder ein "bescheidenes" Sekretariat) beseitigt werden. Der Vorschlag Frankreichs bezgl. Abs. 7 und 3 sei akzeptabel. Zu Art. 18 waere zu bemerken, dass eine sachlich begrenzte Jurisdiktion abzulehnen ist.

Peru AEUSSERTE Bedenken gegen die Proliferation der Systeme und Praeferenz fuer die Ausschliesslichkeit des (aus Kammern zusammenzusetzenden) Tribunals, welches sich gem Art. 11 der Hilfe von Experten bedienen wuerde. Annex II waere zu streichen.

Israel ist gegen die Schaffung eines Tribunals, die uebrigen Alternativen koennten beibehalten werden. Die Notwendigkeit der Abs. 2,3, und 4 wird in Frage gestellt, Annex IB waere ausreichend. Ein Sondersystem fuer den Meeresboden waere angezeigt, doch seien die derzeitigen Bestimmungen ueber ein "Seabed Tribunal" nicht zufriedenstellend.

Bahrein tritt fuer die Integration der Sonderverfahren in das allgemeine System und daher Streichung des Abs.1 lit d und Abs.2 ein und bevorzugt Schiedgerichtsbarkeit.

PLENUM:DISPUTE SETTLEMENT

7. Meeting,11.8.Vorsitz Evensen

Art.9 (Fortsetzung):

Daenemark tritt fuer ein obligatorisches Streitschlichtungssystem und gegen die Proliferation der Instanzen (Kosten und conflicting jurisprudence) ein. Eine Staerkung def Rolle des IGH wuerde begruesst, doch wuerde sich D. der Schaffung eines Tribunals nicht widersetzen. Die britische Idee der Schaffung eines interimistischen permanenten Panel von Schiedrichtern und eines unterstuetzenden Sekretariats sollte weiterverfolgt werden.

Japan ist fuer eine Staerkung der Sonderverfahren, die nicht eine gleichwertige Option zur Auswahl sondern ein allgemein zu akzeptierendes Instrument sein sollten. Die Sonderkomitees sollten auch ueber rechtliche Aspekte befinden (und daher Juristen umfassen) und endgueltige Entscheidungen treffen koennen. Im uebrigen sei die Schaffung eines Tribunals ueberfluessig, IGH und Arbitrage ausreichend.

Kanada hat aus den schon von vielen genannten Gruenden Bedenken gegen eine Gleichstellung der Sonderverfahren mit den uebrigen Streitschlichtungssystemen. Alternativen a bis c seien annehmbar, Arbitrage koennte sich wohl als die populaerste Methode erweisen, der IGH soll weiterhin eine nuetzliche Rolle spielen.

Finnland sieht zwar die Notwendigkeit der Schaffung eines Tribunals nicht ein (IGH ausreichend), doch koennte dies unter der Voraussetzung akzeptiert werden, dass nicht 2 sondern nur 1 Tribunal (Seabed und andere Angelegenheiten) geschaffen werden. Gegen die Sonderverfahren hat F. die bekannten Einwaende, technische Experten sollten als Berater (Art.11) oder vielleicht auch Mitglieder der sonstigen Fora eingeschaltet werden.

Venezuela tritt fuer eine gleichzeitige Eroerterung aller Streitschlichtungssysteme der gesamten Konvention (d.h. auch gem.Teil I) ein. Mitglieder der Sonderkomitees sollten Juristen sein, die mit Hilfe technischer Experten "conciliation" betreiben.

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THIRD INFORMAL PLENARY MEETING ON DISPUTE SETTLEMENT.
AUGUST 5, 1976, 10:30 - 13.00

In the Chair: Jens Evensen, Norway.

The entire morning was taken by the discussion of Article 7, which was not completed.

Chile opened the discussion. He pointed out that Article 7 is the most important article in Section II, and one of the most important ones of the whole Part IV. In summary, he said, it states that if a dispute has not been settled in accordance with Section I, it must be submitted to compulsory settlement, with the exceptions listed in Article 18. This is of paramount importance, not only from a juridical but also ffrom a political point of view. Th e Delegation of Chile has always felt that the compulsory system should not apply to the exercise of sovereigh rights of States. Art. 18 takes care of this to a certain degree. This is absolutely essential, especially in the context of Article 44 of Part II, defining the exclusive economic zone.

Article 18 makes certain exceptions to the exception. These could be discussed. The delegation of Chile would be ready to broaden them. Two further exceptions could be added: international jurisdiction could be made to apply to disputes arising from scientific research and from communication and all legitimate ~~uses of the sea. On the other hand, Chile cannot accept paragraph 1 (a) of Article 18 insofar as it refers to disputes arising "when it is claimed that a coastal State has violated its obligations... by failing to give due regard to any substantive~~ rights specifically established by the present Convention in favour of other States." This means, he said, the exception itself has no meaning. The exception of sovereign rights falls. He was convinced that this view is shared by many States, certainly by the Group of Coastal States. Thus he found himself in agreement with yesterday's interventions by Argentina, India, and Equador. /The phrase he objected to is the only one in the whole Convention that offers a certain guarantee to landlocked States!/

Yugoslavia stressed the importance of the link between Art. 7 and Art. 18. He agreed to the amendment proposed by the Nether lands the previous day, and on the proposal to consolidate the first two paragraphs into one.

As far as the number of tribunals was concerned, Mr. Perisic said his Delegation was against a proliferation of tribunals. A freedom of choice must be built into the system, but the proliferation of disputes should not be encouraged by a proliferation of fora. A clear basis had to be established for the special procedures.

Japan agreed with the proposals to consolidate the first two .

Box 4068, Santa Barbara, California 93103

paragraphs. There must also be a specification of a time limit. Thus Japan proposed the following redrafting:

"Any dispute relating to the interpretation or application of the present Convention shall, at the request of any party to the dispute, be dealt with in accordance with the provisions of Section II, unless the dispute is settled through the application of the provisions of Section I, within a period of ...months after one of the parties has notified its opinion to the other that the dispute exists."

Japan felt that a reference to Article 18 in Article 7 was not needed. The exceptions could be dealt with later.

Brazil agreed with Chile and Argentina. The drafting of Art. 7 was very inadequate. Paragraph 3 was unnecessary; and paragraphs 1 and 2 could be combined. But reference to Article 18 was, in the opinion of Brazil, absolutely essential.

The Republic of Korea was in favor of deleting paragraph 3.

Spain agreed with the general spirit of Article 7. A system of compulsory jurisdiction was essential because many conflicts were bound to arise, considering the profound innovations introduced by the new Treaty and the many ambiguities it contained. Spain supported the drafting changes that had been proposed.

U.S.A. noted that there were very many delegations who, for political reasons, insisted on a reference to Art. 18 in Art. 7. The U.S.A. was ready to accept it.

Poland, Equador, El Salvador, and Oman further discussed the links between Art. 7 and 18, but made no essential new suggestions.

Australia suggested that the exceptions should not leave the determination of boundaries on the seabed uncovered. The same goes for any breach of rules relating to the environment; any arbitrary restraints on communications in areas not under national sovereignty, and for genuine research. These matters could not be left subject to undue delays, without binding laws.

West Germany and Italy repeated some of the comments already made, and supported the drafting changes that had been proposed.

The U.S.S.R. raised an interesting point: Article 18 is a part of Section II. If we speak about the fact that application of the provisions of Section I, are subject to Article 18, the question arises: what about other articles? Must not Article 9, e.g., be

Box 4068, Santa Barbara, California 93103

respected as well? Thus, juridically, the reference in Art. 7 to Art. 18 would not appear to be justified. Furthermore, we are not dealing only with the rights of coastal States but with the rights of other States as well. These might find themselves unprotected by a lex imperfecta.

Canada said that the principles on which Art. 7 was based, were sound. He hoped they will be maintained in the redrafting.

El Salvador made an important suggestion: Certain exceptions are unavoidable in the present situation. However, one did not have to choose between all or nothing. In cases where compulsory jurisdiction could not be applied, one could instead apply the more flexible principle of compulsory conciliation. I.e., procedures are obligatory; acceptance of conclusions is voluntary. He referred to the Vienna Convention on Treaty Law, where compulsory conciliation served as a great tool. He suggested that this tool be considered when discussing Article 18.

Peru stressed the paramount importance of the reference to Art. 18 in Art. 7.

Bahrein suggested an amendment:

"Subject to the provisions of Article 18 of this Chapter, any dispute relating to the interpretation or application of the present Convention shall, where no settlement has been reached by recourse to the provisions of Section 1, be submitted at the request of any party to the dispute, to the forum having jurisdiction under the provisions of Section I, of this Chapter.

France noted that, in its present form, paragraph 1 was no good. It expressed support for the amendment proposed by the Netherlands. It further noted that, from a juridical point of view, reference to Article 18 was not necessary, but said, France would not object to it.

August 20, Workshop of the First Committee.

In the Chair: Dr. Jagota.

Germany opened the discussion by addressing a number of questions to the "77." According to the German interpretation of the draft articles submitted by the "77," the Authority would have the discretionary power to reject an application under Article 8 bis (a), even if the applicant had already invested in the area. The conditions underwhich an applicant could be rejected are not specified. Question: Is this interpretation correct or mistaken? Second question: Why has the Group of 77 abandoned a system that it seemed to have accepted in Geneva? The Delegation of the Federal Republic of Germany insisted on a parallel system because it offered long-term security both to the contractors and to the Authority. This is essential to encourage investments which would have to be very substantial. Security must be given for a period of 30-40 years.

China supported the proposal of the "77," which, according to the Chinese Delegate, corrected serious deficiencies in the RSNT. China supports the concept of the Common Heritage of Mankind, with all rights to exploration and exploitation vested in the Authority. The superpowers made a number of unjustified charges against the 77. This, of course, was natural. The proposals of the two superpowers differed in wording, but in substance they were identical: they would defraud the Authority and turn the common heritage of mankind over to private exploitation through States and companies. The socalled parallel system transforms the common heritage into the private property of States: this runs counter to the Declaration of Principles. This was the central issue.

Chile looked for common ground between the "77" and the industrialized nations. The latter want to avoid interference by the Authority: they want to avoid discrimination and arbitrariness; they want guarantees for participation. The reasoning of the "77" is the same, but from the opposite angle: they want to avoid arbitrariness on the part of applicants and contractors. Both kinds of arbitrariness have to be avoided. This provides a common ground. The "77" support two basic premises: they do not wish the Authority to be arbitrary. There are limitations to its discretionary powers. The system is to be nondiscriminatory; the Authority is to work on the basis of objective criteria. The industrialized nations should realize that pure automaticity does not insure fair conditions. They should clearly indicate: what points do they think are negotiable?

U.S. The U.S. delegate summed up the Chilean position as indicatingthat a controlled system must be established to prevent abuses of the common heritage. The United States agrees

with this position. The Chinese had misinterpreted this position. The U.S. had always been flexible about controls. They had been against what the "77 termed "effective and full" control. One thing is to give the Authority power to prevent abuses through due process and adequate supervision and control and inspection -- and the RSNT gives wide scope to that -- but power to restrict access is quite another matter, if the true purpose is the prevention of abuse. If applicants have a history of violating the Treaty, this would be a ground for rejection. If the applicant is, prima facie, a phony, this would be another ground for rejection. The American Delegate wanted clarification on this point: what, according to the 77, should be the criteria that would justify the exclusion of an applicant? The Delegate of the U.S. had a number of other questions, mostly of a definitional charater. He suggested that questions and answers, at this stage, should be limited to Article 22.

paragraph 1: What was meant by the term "exclusively"? This is a conceptual problem and a problem of semantics. He always thought that if the Authority is a partner to every contractual agreement that occurs and if theAuthority is in control, then it is the exclusive operator. The Authority could be considered to be such even under a licensing system. It was not clear, however what the word "exclusively added to the sentence. The word was superfluous. It lacked precise legal meaning: unless it was intended to have a bearing on Article 9, in which case there would be a fundamental difference between the American position and that of the 77 -- one which time could not resolve.

Paragraphs 1 and 2 were said to represent a parallel system: but what, then, was the meaning of the words "as determined by the Authority?" Would this give discretion to the Authority to decide when a contract should be granted and when it should be rejected?

The words "through a form of association" would seem in practice to mean "through an equity joint venture.." The term was not used, but this is what it meant to the American delegation. This would mean that the Authority could even expropriate an applicant, bu buying him out.

In paragraph 3, the American Delegation questioned the term "draw up" in line 2; should it not rather be "draw"? Why "entered into"? Was not the term "drawn ? The American delegation suspected some deliberate vagueness in this terminology, which would open the door to some discretionary powers on the part of the Authority.

In paragraph 4, what was meant by the word "full" preceding the word "effective?" Especially in connection with the term "at all times," this terminology opened the possibilities for the most absurd and unacceptable forms of supervision.

The notion that contracts could be "negotiated" implied that they could be rejected. This was unacceptable. The Authority could determine at any time that negotiations had failed. This opened the door for those who wanted to prevent production. The question of access was not to be subject to negotiation. Negotiability must be limited. What the negotiator must bring to the bargain must be objectively determined, and subject to dispute settlement procedures. The 77 proposal would leav the Authority with the subjective right to determine that negotiations had failed. This was unacceptable.

Under the 77 proposal, conditions for a contract might include the obligation to place processing plants into developing countries. This was unacceptable. What would be the use of having gained free access to the area, if developing countries were in a position to cut off the supply by their rights over processing plants?

The U.S.S.R., replying to the Chinese Delegate, defended its record in the Conference and the Seabed Committee: It always had accepted the idea of control through the Authority. It never wanted to get hold of the seabed. On the contrary, it held the concept of the non-appropriability of the seabed to be fundamental.

India wished to clarify the position of the 77: the Group had never accepted a parallel system of exploitation.

China re-iterated its attacks against the superpowers and, in particular against the social imperialism of the USSR.

The Chairman called for a more friendly tone to encourage fair negotiation.

Peru clarified a number of questions that had been raised especially by the Federal Republic of Germany and by the U.S. With regard to 8 bis (f), it was pointed out that the first sentence had been taken over from the RSNT, and that it was not intended to mean that the Authority could add further requirements. Secondly, if the Authority were to reject an applicant, the 77 proposal did not imply that the Authority did not have to state its reasons for the rejection. This point really had not come up in the discussions, but it was easy to clarify the situation by proposing that the Council would have to state the reasons for any rejection.

The 77 did not retreat from the positions held in Geneva.

With regard to the objections raised by the Delegate of the U.S.: The main purpose of the word "exclusively" was to ensure that the sole form in which activities could be conducted, is by the Authority as specified in the following paragraphs. No independent, separate activities could be conceived. It must be within the framework of paragraph 1.

"As determined by the Authority": The meaning of the phrase becomes evident in the context of the other paragraphs.

"Through a form of association": "Form of association" is used in a general sense. It is not attempted to define any specific form. The 77 want flexibility: not necessarily equity joint ventures. If the form is not clear, the defect is already in the RSNT, from which this para. is taken over.

"ith regard to the terms "draw up" and "entered into" -- they may require polishing in the English translation. There certainly was no sinister intention behind the choice of words.

Regarding paragraph 8 bis (f), the delegate of Peru would answer this question later. What precisely was required by the 77 that was to be negotiated, and could not be put into Annex I?

August 23, 3-6 P.M., Committee I, WORKSHOP
In the Chair: Netherlands.
Discussion opened by GHANA, making the following main points:

1. An acceptable package seems to be one which establishes the over-all and effective control by the Authority over all activities in the Area while adopting a decision-making procedure which ensures that the essential interests of all, including those of the minotiry would be adequately safeguarded. The system of exploitation can therefore not be successfully negotiated unless it is done in relation withthe status and functions of the Authority including the decision-making mechanisms of its organs.

2. There is a wide gap between the conception of the U.S. of the status of the Enterprise and that of the 77.

3. It is difficult to understand the developed countries conception of the Authority as an outside body from an alien planet whose interference in our affairs should by all means be resisted. The Authority is a body constituted by the international community and entrusted with the exercise of our joint sovereignty over the Area.

4. The conditions on which the U.S. proposals accept the Enterprise leads to believe that it is only able to accept it so long as it remains a delusion with no possibility of assuming a substantive form to enable it to conduct exploitation in the Area.

5. With regard to procedure: Ghana suggests a small negotiating group to be established to explore the nature of possible compromise on the issue under discussion. Then it should take up another issue, giving delegations time to consult with each other; then it should take up this first issue again, etc.

Sri Lanka, not present during the first discussion of the proposal of the 77, gave some further explanations of terms in the text like "exclusively," "full and effective control," etc. Sri Lanka made also some interesting suggestions with regard to negotiating procedure: 1. The two chairmen should identify three or four major issues on which negotiations should begin. 2. Mr. Sondaal should then exchange views with the Group of 77 while Mr. Jagota should do the same with representatives of the industrialized States. 3. Then the two chairmen should confer with each other and redraft articles in the light of the discussions held. 4. Then negotiations should begin on the basis of these new articles. Negotiations should be held by a small group, but all other delegations should be there to hear them -- according to the so-called arena method.

Canada praised the leadership of the group of 77 in the First Committee and said the document submitted by them could well serve as a basis for discussion. The Canadian Delegation stressed the point that Article 22 cannot be understood without con-

sidering the economic aspects of the exploitation of the area, e.g., pay-back on investments and adequate profits, and the relationship between exploration rights and exploitation rights. What Canada had to say on such points, however, was quite compatible with the document submitted by the 77. Canada did not at all propose that there should be unrestricted access to the Area. Limitations on access should be non-arbitrary and non-discrimonatory, but access could not be unrestricted. This would be contrary to the principle of common heritage. Canada was quite ready to accept production controls.

With regard to the parallel system, Canada and Australia were often mentioned as the originators of this concept, but the Canadian and Australian proposals really had been quite different. The Canadian approach favored a joint-venture system, but if the majority of the Committee wanted a different kind of Enterprise system, Canada would go along as well.

Canada was in agreement with the procedural suggestions made by Ghana and Sri Lanka.

Czechoslovakia

The German Democratic Republic

Poland

Mongolia elaborated on the Soviet proposal.

Guatemala criticized the Soviet proposal.

Ivory Coast had some specific criticism of the Soviet proposal: The division of the area that was the common heritage of mankind was rather curious. The establishment of two different regimes in the area was bound to lead to conflict. It was not clear why the proposal introduced two different kinds of "supervision" in the area. As far as the Authority's own enterprise was concerned, this supervesion was to be "effective" and "full." with regard to States and other enteprises, the supervision was to be "fiscal and administrative." The Soviet proposal needed considerably more elaboration.

France: endorsed the procedural suggestions by Ghana and Sri Lanka, but warned that the workshop should not be fragmented.

Algeria rejected threats of unilateral action and declared that Algeria would never agree to ambiguous provisions under such threats. It would never sign provisions that betrayed the principle of the common heritage of mankind, which was a revolutionary principle that could be embodied only in a strong enterprise system. Algeria unconditionally rejected any parallel system.

Lybia also rejected the parallel system. States would exploit

the area according to their means: which means, only a few technologically advanced and rich States could exploit, whereas the international community would be left with nothing

Yugoslavia made an eloquent plea for the common heritage of mankind, which must be managed through the international Authority through its Enterprise.

Jamaica tried to establish some common ground between the three documents before the Committee. (1) Everybody reall y agreed that there should be a unitary system of exploitation under the Authority; (2) in the final analysis, the only admitted entities are the Enterprise and States (since companies have to be sponsored by States). There was some difference of opinion with regard to the degree of automaticity of access; but, on the one hand, the proposal of the 77 put some considerable restraints on the discretionary powers of the Authority; on the other hand, the U.S. proposal granted to the Authority not only fiscal and administrative control but control also for the purpose of assuring compliance with the provisions of the Convention. So the difference, on the point of control, was not really so wide as one might assume. Also with regard to the Enterprise itself, differences had narrowed. That the Enterprise should exist was no longer a point of contention. The Enterprise was conceived by everybody to be a part of the Authority. It was to represent mankind as a whole: not just a part of it: not merely the developing nations. There was no reason, therefore, to look upon it with horror.

Preliminary Comments

The articles on Finance will have to be redone completely. I'l submit a draft a little later, as well as detailed comments to all the other articles.

Today only the following:

With regard to the Assembly, the production limitation, and the Enterprise, see, for comment, the piece I gave you a few days ago. With regard to the Enterprises, I would like to add the following general comments:

1. The arrangement proposed gives full and effective control over all production in the area to the Authority.

2. It embodies a practical approach to the control of multi-national enterprises in general, in accord with the Report of Eminent Persons; in accord, also with a general trend even within industrialized nations. See, for example, the Statute for European Companies now under discussion at the EEC.

3. This approach would force member States to make adequate financial contributions to the Authority during the initial stage, or else they cannot produce at all.

4. contributions could be simply assessed to States to raise the necessary initial capital; or loans could be gotten from the World Bank, or a tax could be imposed on companies for offshore operations; or there could be a combination of all three methods. Automatic transfers to the Authority would, and should be encouraged. This is in accord with the proposals made by the developing nations in all recent fora.

If States are not willing to cooperate with the Authority in raising the initial 51 percent of capital needed for one or two Enterprises, the whole effort is not worth while.

5. When the Authority has generated sufficient income, it could charter an Enterprise, with 100 % of the Directors appointed, and 100 % of the capital provided, by the Authority. The approach suggested is flexible and comprehensive.

With regard to Dispute Settlement, I have tried to incorporate the essence of last week's Plenary discussion. The proposal made is in line with the remarks made by your Delegation.

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FOURTH INFORMAL PLENARY MEETING ON DISPUTE SETTLEMENT.
FRIDAY, AUGUST 6, 1976.

IN THE CHAIR: JENS EVENSEN

The discussion on Article 7 was closed with two further statements.

Iceland supported a general system of dispute settlement; but where sovereign rights were concerned, the coastal State's decision must be final. This included also a coastal State's unilateral determination of the total allowable fish catch. Iceland supports Article 7 only if Article 18 is amended accordingly. Iceland will return to this point when Article 18 will be under discussion.

Kenya indicated less than enthusiasm about the whole scheme. In particular, the transition, or automatic transfer, from informal to formal, from voluntary to compulsory procedure, was not satisfactory. As far as Article 18 was concerned, Kenya would like to see the least possible number of exceptions to the exceptions. With regard to Article 7, Kenya would go along with the amendments proposed, provided the reference to Article 18 was maintained.

The Chairman opened the discussion on Article 8. He pointed out that this was a very comprehensive and interesting article, determining the relationship between the general system, the dispute settlement system under Part I of the Convention, and the special procedures.

The Netherlands suggested to suspend discussion of Article 8. Since it was as yet quite uncertain what the special procedures would look like or what the First Committee would come up with, it was premature to discuss the relationship of these parts with Section II of Part IV.

The Chairman agreed in principle but thought that a preliminary discussion might nevertheless be useful.

Japan agreed with the Netherlands, particularly as far as paragraphs 1 and 2 of Article 8 were concerned. With regard to paragraph 4, Japan raised an issue which loomed large in the entire discussion that followed: i.e., that it is not possible to separate disputes relating to the application from those relating to the interpretation of the Convention. Finally, Japan suggested that the word "shall", preceding (a) in paragraph 4, should be replaced with "may."

Spain supported the Netherlands and Japan, adding that Article 8 prejudged the nature and competences of other bodies which had not yet been discussed.

Peru raised another fundamental issue: Before discussing Article 8 it would have to be decided whether the Convention should propose one unified dispute settlement system, or whether there should be one system for the seabed and another one for the rest of ocean space. A decision on this fundamental issue would affect also the discussion on Articles 9 and 10.

The following discussion made it quite clear that most of the delegations favored a unification and simplification of the system.

The U.S.S.R. suggested that the discussion on Article 8 be divided into three parts, focusing on what is now paragraph 1, paragraph 3, and paragraph 4. These might in fact develop into three separate articles. Attention could, at this point, focus on paragraph 3. The question of whether the special committees should deal merely with practical matters, or whether they should also be competent to deal with question of the interpretation of the Convention should be studied in depth.

Switzerland returned to a number of issues already raised and added that conflicts of competence might arise among the special committees, and that article 8 offered no guidance in such cases.

Bahrain pointed to problems of overlapping jurisdiction and duplication of procedures that might arise from a system as complicated as the one under consideration. Two sets of Courts might be deciding on the same case, making conflicting binding decisions. With regard to the procedures under Annex II, who was going to decide whether a matter concerned application or interpretation of the Convention? The duality of jurisdiction would lead to controversy.

Equador supported those who were in favor of postponing the discussion on Article 8 until Committee I had made its own decisions. In the meantime, however, the Delegation of Equador still was in favor of one single system to avoid the risks of contradictory jurisdictions. One single system also would be more economical. Equador also favored the elimination of the special procedures under Annex 2. The provision of specialized chambers on benches in the Law of the Sea Tribunal would serve the same purpose. This suggestion had already been made by the group of 77.

Israel agreed with the general trend of the discussion and pointed to the need of careful coordination between Article 8, Part I, and the Annexes. At present, there was a contradiction between paragraph 3 (c), Article 9 of Annexes II (the common Article 9), and Article 10 (2) of Part IV with regard to the finality of judgments, or the availability of "any further procedure," or of appellate jurisdiction. He thought that the attempt to separate "application" from "interpretation" of the Convention would cause confusion and constituted a conceptual weakness in the whole system. The term

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"findings" in (c) of paragraph 2 and 4 was inadequate. "findings" is not a term of art inasmuch as it can have different meanings in different contexts.

Venezuela was in favor of one single Tribunal with specialized chambers. It also objected to the separation between application and interpretation of the Convention. Special procedures should be restricted merely to fact finding, otherwise confusion would ensue.

Tunesia agreed with the general trend of the discussion.

The U.S.A. found this preliminary discussion useful and clarifying. It revealed the difficulties stemming from a multiplicity of jurisdictions. However, even if the system was unified it still would have to deal with several jurisdictions. He pointed to various precedents in various countries. In many countries there are supreme courts with several jurisdictions. Occasionally cases arise that belong belong both to commercial and civil-law chambers, etc. In other countries there are two systems: a general, and one dealing with administrative law. He also pointed to the interesting relationship existing, e.g., in Europe between national courts and the courts of the Community: sometimes the national court asks the Community Court for an interpretation of the Convention, and then proceeds on the basis of this interpretation. The same relationship sometimes exists between the courts of two different countries, or between a State and a Federal Court. He also thought that the relation between technical and legal questions could be clearly established. Some questions cover only the establishment of fact; others imply interpretations. The committees established under the Annexes for special procedures might merely establish facts, etc. There might be a difficulty in trying to distinguish between interpretation and application. "Execution" and "implementation," on the other hand, could certainly be distinguished from "interpretation." There are many precedents for the provisions of Part IV. But the question was: do we want to go in this direction? Sooner or later we would have to clarify this basic question.

Oman expressed preference for a unified, simplified system but suggested that a detailed discussion on the whole Part IV was premature.

Algeria stressed the importance of Articles 7 and 8, expressed its preference for one single Tribunal on the Law of the Sea since a proliferation of fora would weaken the Convention, and recommended a postponement of the discussion on Article 8 until this basic question was settled.

Box 4068, Santa Barbara, California 93103

Australia suggested that there was a real need for some special procedures, not because of geographic divisions, but with regard to the subject matter of the dispute. There must be some special procedure with regard to Part I of the Convention; because disputes here would involve different parties. Fishermen, too, have special needs, and the same is true for the other categories. While accepting this need, however we must simplify as much as possible. This is being attempted by reconciling the Annexes with the other parts of the Convention. One way of simplifying would be by avoiding the distinction between application and interpretation. In this case, however, the specialized committees must include legal experts together with technical experts. Also, the possibility of appealing from the organs of special jurisdiction to those of general jurisdiction should be avoided. Special procedures may be linked with the general system through special chambers rather than through the special committees proposed in the Annexes. This requires a discussion in depth. But this preliminary discussion had certainly been useful.

Summing up the discussion, the Chairman stressed that everything said today was preliminary, and that a more final discussion of the article must be postponed to a later stage. The same applies to Articles 9 and 10. He felt, however, that these preliminary exchanges had been very useful, and he suggested that we should proceed with the article-by-article approach adopted thus far.