

DOCUMENT A/CONF.62/104

Resolution of the Council of Ministers of the Organization of African Unity on the law of the sea*

[Original: English/French]
[5 August 1980]

The Council of Ministers of the Organization of African Unity meeting in the thirty-fifth ordinary session held at Freetown, Sierra Leone, from 18 to 28 June 1980.

Recalling the declaration and resolutions of the Organization of African Unity concerning the Law of the Sea particularly the Declaration of Addis Ababa (1973), the Declaration and resolution of Nairobi, February, 1979 and Monrovia, July, 1979,

Considering that the Third United Nations Conference on the Law of the Sea has now entered a decisive stage towards the adoption of a comprehensive and universal convention,

Desiring to settle in a spirit of mutual understanding and co-operation, all issues relating to the law of the sea,

Conscious of the historic significance of such a convention,

Taking into account the evolution of the negotiations particularly relating to the general aspects of the law of the sea, of scientific research and the preservation of the marine environment,

Having considered the progress Report of the Secretary-General on the eighth and ninth sessions of the Third United Nations Conference on the Law of the Sea, CM/1066(XXXV):

DECLARES:

1. That the transfer of technology including processing of sea-bed resources and the training of personnel constitute an obligation for every contractor with the Authority to enable it to exploit the resources of the international area;

2. Reaffirms the principles adopted in the Declarations of Nairobi and Monrovia concerning the rejection of any system in the convention of voting in the Council based either on the principle of the veto, of collective voting or of weighted voting;

3. That the provisions for entry into force of the convention should require a relatively high number of States in order to ensure an adequate composition in the Council of the Authority taking due account of the principle of equitable geographical representation;

4. National liberation movements recognized by the Organization of African Unity, the United Nations and the specialized agencies shall have the right to become parties to the convention;

5. The resolution concerning the establishment of the preparatory commission should provide for:

(a) participation by all those who have taken part in the preparation and formulation of the Convention;

(b) specific powers consisting exclusively for the establishment and function of the organs of the Authority and the Tribunal of the Law of the Sea;

(c) any decision of the preparatory commission should be in the form of recommendation to the Authority.

* Circulated at the request of the representative of Liberia, Chairman of the Group of African States at the ninth session of the Third United Nations Conference on the Law of the Sea.

DOCUMENT A/CONF.62/105

Report of the Credentials Committee

[Original: English]
[28 August 1980]

1. The Credentials Committee held its 13th meeting on 28 August 1980. Representatives of all the members of the Committee except Chad and Ivory Coast were present.

2. The Committee had before it a memorandum by the Executive Secretary of the Conference, dated 27 August 1980, indicating that as of that date communications had been received concerning 142 States participating in the session, and Namibia (the United Nations Council for Namibia).

3. For the purposes of the resumed ninth session, credentials in the form provided for by rule 3 of the rules of procedure had been submitted to the Executive Secretary by the following 101 States: Albania, Algeria, Angola, Australia, Bahrain, Barbados, Belgium, Benin, Bhutan, Bolivia, Brazil, Buglaria, Burma, Byelorussian Soviet Socialist Republic, Cape Verde, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Dominica, El Salvador, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Holy See, Honduras, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Lesotho, Liberia, Libyan Arab Jamhiriya, Liechtenstein, Madagascar, Malawi, Malaysia, Mali, Malta, Mexico, Monaco, Mozambique, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Saint Lucia, San Marino, Sao Tomé and Príncipe, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Syrian

Arab Republic, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, United States, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

4. The following 18 States had submitted credentials which remained valid for the ninth session in New York, and the resumed ninth session at Geneva: Austria, Bahamas, Canada, Democratic Kampuchea, Ethiopia, Guyana, Hungary, Iceland, Luxembourg, Morocco, Norway, Papua New Guinea, Senegal, Switzerland, Tonga, Trinidad and Tobago, Tunisia and the United Kingdom of Great Britain and Northern Ireland.

5. The appointment of the representatives of three States: Djibouti, Guinea-Bissau and Paraguay has been communicated to the Executive Secretary by telegram from the ministry for foreign affairs concerned. The appointment of the representatives of Namibia (United Nations Council for Namibia) has also been communicated to the Executive Secretary by telegram.

6. The appointment of the representatives of the following 18 States has been communicated to the Executive Secretary by letters, cables or notes verbales: Argentina, Bangladesh, Burundi, Congo, Dominican Republic, Ecuador, Egypt, Fiji, Jordan, Kuwait, Lebanon, Mongolia, Nicaragua, Panama, Poland, Saudi Arabia, Sudan and Venezuela.

7. In addition, the delegations of Mauritius and Uganda have signed the register of the Conference in accordance with rule 40 of the rules of procedure.

8. The Executive Secretary informed the Committee that, subsequent to the preparation of his memorandum, credentials in due form had been received from Ecuador, and a telegram had been received from the Ministry of Foreign Affairs for Fiji.

9. The Chairman proposed that, in the light of past practice, the Committee should accept the credentials referred to in paragraphs 3 and 4 above and that, as an exceptional measure and subject to later validation, it accept the communications referred to in paragraphs 5 and 6 above in lieu of formal credentials.

10. The representative of Hungary recorded his delegation's objection to the acceptance of the credentials of the delegation of Democratic Kampuchea, stating that, in the view of the Hungarian delegation, these credentials are null and void.

11. The representative of China objected to the statement by the representative of Hungary, stating that, in the view of the Chinese delegation, the credentials of Democratic Kampuchea are valid.

12. The Chairman noted that the views and reservations expressed would be reflected in the report of the Committee. Subject to these views and reservations, summarized in paragraphs 10 and 11 above, the Committee decided to approve the following draft resolution.

"The Credentials Committee,

"Taking into account the views expressed during the debate;

"Accepts the formal credentials of the representatives that have been received;

"Accepts as an exceptional measure and subject to later validation, the communications referred to in paragraphs 6 and 7 of the Executive Secretary's Memorandum of 27 August 1980 in lieu of formal credentials."

DOCUMENT A/CONF.62/106

Letter dated 29 August 1980 from the Chairman of the Group of 77 to the President of the Conference

*[Original: Arabic/English, French/Spanish]
[23 September 1980]*

On behalf of the Group of 77, I am submitting through you the document entitled "Legal position of the Group of 77 on the question of unilateral legislation concerning the exploration and exploitation of the sea-bed and ocean floor and subsoil thereof beyond national jurisdiction", and I request that it be circulated as a document of the Conference.

*(Signed) E. K. WAPENYE
Representative of Uganda
to the Third United Nations Conference
on the Law of the Sea
and Chairman of the Group of 77*

LEGAL POSITION OF THE GROUP OF 77 ON THE QUESTION OF UNILATERAL LEGISLATION CONCERNING THE EXPLORATION AND EXPLOITATION OF THE SEA-BED AND OCEAN FLOOR AND SUBSOIL THEREOF BEYOND NATIONAL JURISDICTION

The year 1970 was an important turning-point in the elaboration of the new law of the sea. On 17 December, the General Assembly of the United Nations adopted two important resolutions: the first was a "Declaration of principles governing the sea-bed and the ocean floor beyond the limits of national jurisdiction" (resolution 2749 (XXV)); the second concerned the convening of the Third United Nations Conference on the Law of the Sea (resolution 2750 C (XXV)). These resolutions were the outcome of the activities and work carried out on the subject in the United Nations since 1967.

The Declaration of principles affirms the existence of an international Area free from State sovereignty, which cannot be subject to appropriation by any means, by States or private persons. This Area constitutes the Common Heritage of Mankind, and its resources must be exploited for the benefit of mankind as a whole and, in particular, of the developing countries. Thus the Area can only be subject to an international régime and managed and regulated only by appropriate international machinery.

The Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction and the Third United Nations Conference on the Law of the Sea were instructed by the second resolution to prepare a draft and subsequently a convention relating to the régime and the international machinery "on the basis of the Declaration of principles". The negotiations have been going on for more than seven years with

the participation of all members of the international community, which only agreed to participate in the process on the basis of the principles expressed in the Declaration of 17 December 1970. This declaration of principles constitutes therefore the framework of the negotiating process and fundamental legal basis of the whole new undertaking of codification and progressive development of the law of the sea under the auspices of the United Nations.

In spite of this, the United States of America, on 28 June 1980, adopted a law (96-283) unilaterally authorizing its nationals to explore and exploit the resources of the international Area; the Federal Republic of Germany is also in the process of adopting unilateral legislation. Other similar attempts are being made in other industrialized countries. These laws provide for reciprocal recognition or the conclusion of future limited agreements between the countries concerned, for the interim regulation of the exploration and exploitation of the resources of the international area, in the absence of a convention of a universal character in force for those States.

The legislation or planned legislation and future limited agreements constitute a violation or a manifest intention to violate the fundamental principles of international law applicable to the Area. Therefore, the unilateral legislation adopted and the activities which will be undertaken are wrongful acts which are bound to engage the responsibility of the States involved and gravely endanger the positive results of the Third United Nations Conference on the Law of the Sea.

1. Wrongfulness and non-invocability of unilateral legislation and limited agreements

The principle of the common heritage of mankind is a customary rule which has the force of a peremptory norm

On 7 March 1966 the Economic and Social Council, having examined the question of the mineral resources of the sea-bed, adopted resolution 1112 (XL) requesting the Secretary-General "to make a survey of the present state of knowledge of these resources of the sea, beyond the continental shelf, and of the techniques for exploiting these resources...and to attempt to identify these resources now considered to be capable of economic exploitation, especially for the benefit of developing countries...and of the practicality of their early exploitation". The fact that the development of technology envisaged the possibility of exploring and exploiting these resources, raised the mat-