ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF MAURITIUS

v.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

REPLY OF THE REPUBLIC OF MAURITIUS

VOLUME III

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18 November 2013

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Letter dated 9 March 1966 from P.H. Moberly, UK Ministry of Defence to K.W.S. Mackenzie, Colonial Office

CONFIDENTIAL

19

MINISTRY OF DEFENCE
Main Building, Whitehall, LONDON S.W.1
Telephone: WHItehall 7022, *ext.*

File MA.

Our reference:
Your reference:

9th March 1966

BIOT Fishing Rights

Thank you for the copy of your letter (PAC. 23/892/016) of February 8th enclosing a proposed letter to the Governor of Mauritius about fishing in the Chagos archipelago. I am sorry we have been slow in replying: I have been away a certain amount lately. We have a number of comments which you will wish to take into account in the draft.

2. First, until we know what type of defence facilities may be needed on these islands it seems to us unwise to be at all precise about the terms on which fishing in the waters around them might be permitted. Although some fishing might be allowed in practice, in our view we ought to keep the right to exclude it firmly in our hands - not only geographically but in time. Certain fishing might be considered harmless after an island had been put to some defence use, but with the later construction of an entirely new facility we might want to be more restrictive. I imagine that the Americans too would prefer to be cautious about the terms of any commitment at this stage. We therefore suggest that paragraph 3 B(iii) should be shortened and re-worded as follows:-

> "The possibility of limited access for fishing in the waters surrounding those islands excluded for defence use would be considered as and when the situation arises by the British and US governments, but would of course have to be subject to their overriding defence needs".

3. Similarly, where islands lie close together it is conceivable that we might not welcome unrestricted access by fishermen to a deserted island next door to one from which we had had to clear the local inhabitants. To be on the safe side, we should prefer to retain the right to exclude islands additional to those already cleared for defence use. In paragraph 3 B(ii) we suggest that the words "from which population had not yet been cleared" should be replaced by "not specifically excluded".

4. In general, before an approach is made to the Americans, we think that more thought needs to be given to the related questions of territorial waters and fishing limits. These two are not necessarily the same thing. If current UK law were extended to the BIOT, the effect would be that the Territory would:

/a...

K.W.S. Mackenzie Esq.,
Colonial Office.

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a. adopt a twelve miles fishery limit drawn from base lines in accordance with the 1958 Territorial Sea Convention, granting "habitual fishing rights" between the six and twelve lines to Mauritius and to any other states whose vessels had fished in the area during the preceding ten years, and

b. retain a three mile territorial sea limit drawn from the same base lines.

5. We are asking the Navy hydrographer to provide charts of the BIOT islands showing the appropriate territorial sea base lines and the three, six and twelve mile limits drawn from them. We shall want to see these charts before making up our minds which limits would best meet our defence requirements, and I will of course gladly let you see the charts.

6. This leads me on to two further points. First, although the undertaking to use our good offices with the US government about safeguarding fishing rights concerns only Mauritius and the Chagos archipelago, in principle any arrangements made with Mauritius would presumably apply equally to the BIOT islands formerly administered by Seychelles. Would you therefore consider bringing the Governor of Seychells into the correspondence? Secondly, we should remember that any fishing limits which we accept with Mauritius primarily in mind would apply to other countries too. The Soviet Bloc, for example, have ocean going fishing fleets whose range of operations is increasing through the use of modern techniques. Where it might seem harmless to allow local fishermen within so many miles of some defence installation, the presence of Russian trawlers might be quite another matter. It would thus be convenient to be able to base any undertaking to Mauritius on habitual or traditional fishing arrangements, provided that no other countries can claim similar use in the past. Could this point be brought out in paragraph 5? It is essential that, in helping to meet a special plea on the part of Mauritius, we can still keep other fishing fleets at a safe distance.

7. I am copying this letter to T.W. Hall (Cabinet Office), P. Nicholls (Treasury), A. Brooke-Turner (Foreign Office) J.G. Doubleday (CRO) W.G. Lamarque (Ministry of Overseas Development), A.W. Baker (Treasury Solicitors)

(P.H. MOBERLY)

Annex 52

Letter dated 29 April 1966 from A. Brooke Turner, UK Foreign Office to K.W.S. Mackenzie, Colonial Office

CONFIDENTIAL

Foreign Office, S.W.1.

29 April, 1966.

(3)4/[illegible]14)

6

We discussed on the telephone the draft letter to Mauritius enclosed with your letter DAO 93/892/016 of 8 February about fishing rights and practice in the Chagos archipelago area. We agreed that you should despatch the letter as it stood, and I undertook to send you confirmation of the points I made to you arising out of the draft. I regret that, owing to the absences of several of our Legal Advisers, it has taken some weeks to get this letter off to you.

2. The revised version of paragraph 3B(iii) proposed by Moberly in his letter of 9 March is acceptable to us, as is his suggestion for amending paragraph 3B(ii). Our legal advisers see no objection to the account given by Moberly in paragraph 4 of his letter of the effect of extending current United Kingdom law to the BIOT.

3. I agree with Moberly's suggestion in his paragraph 6 that it would be right to bring the Governor of the Seychelles into this correspondence, since the question of fishing rights may arise in parts of the BIOT other than the Chagos archipelago.

4. In the second part of his paragraph 6, Moberly draws attention to the need to bear in mind the possible interest of countries from outside the area in fishing operations off the BIOT islands. I understand that, as matters stand at present, it would be possible for the United Kingdom to declare an exclusive fishing zone of up to 9 miles beyond the limits of the 3 mile belt of territorial sea, and that within this zone Her Majesty's Government would retain control of the exercise of fishing rights. It would then be for Her Majesty's Government to decide who should be permitted to fish in the area. The rights might be given exclusively to fishermen of Mauritius or the Seychelles; or to any country from which fishermen had operated in the area before the establishment of the exclusive fishery zone; or to Commonwealth countries; or to fishermen of any other countries which might be designated by Her Majesty's Government. However, I understand that Japan may shortly bring a case against New Zealand in the International Court of Justice over the establishment by New Zealand of an exclusive fishery zone extending to the 12 mile line. If the Court's decision went against New Zealand, naturally the value of such a zone would be greatly reduced unless a change of limit of the territorial sea resulted in practice.

/5.

D.W.S. Mackenzie, Esq.,
Colonial Office.

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5. There appear to be two interests involved here. First, it will be necessary to do all we can to exclude the fishing fleets of countries whose interest in the BIOT might be deemed prejudicial to our defence interests there. Secondly, I assume that you will consider it necessary to do all that can reasonably be done to preserve the traditional rights of fishermen from Mauritius (and perhaps the Seychelles) to fish in the area. It is important to know what other countries have hitherto shown an interest in fishing in the waters off the islands now constituting the BIOT, and I understand that you will be obtaining information about this from the Governors. In addition, it would be interesting to know whether they have received any information about the intentions of other countries to begin fishing in the area; it is I imagine possible that fishing vessels from Japan will take an interest if they have not done so already.

6. I am copying this letter to Hall, Cabinet Office, Nicholls, Treasury, Doubleday, Commonwealth Relations Office, Lamarque, Ministry of Overseas Development and Baker, Treasury Solicitors.

(A. Brooke Turner)
Defence Department

Annex 53

Draft letter dated June 1966 from A.J. Fairclough to Sir John Rennie, Governor of Mauritius

DRAFT FOR CLEARANCE

PAC 93/192/016
MIC/58/21

June 1966

CONFIDENTIAL

Will you please refer to correspondence ending with your savingram No.641 of the 16th November about fishing in the Chagos Archipelago.

2. The enquiry in our telegram No.305 was related to the undertaking given to Mauritius Ministers in the course of discussions on the separation of Chagos from Mauritius, that we would use our good offices with the U.S. Government to ensure that fishing rights remained available to the Mauritius Government as far as practicable in the Chagos Archipelago. It seems certain that there would have to be restrictions on the extent to which either our own or American defence authorities would agree to fishing rights being retained by the Mauritius Government once defence installations have been developed on any of the islands of the Chagos Archipelago but as we see it, these need not necessarily be such as to deny fishing rights altogether. The best way of dealing with the matter and at the same time fulfilling our Ministers' undertaking to Mauritius Ministers may well be that during the period before defence installations are introduced into any of the islands of the Chagos Archipelago, an attempt should be made to clarify the arrangements which would govern access by fishing vessels once any of the islands of the Archipelago are actually taken for defence use.

3. As we see it a reasonable arrangement might contain the following elements:-

A. That there should be unrestricted access throughout the Archipelago during the period before any of the islands are taken over for defence uses and cleared of population.

B. Once one or more of the islands has been taken over and cleared of population, the following arrangements would apply -

(i) Mauritius fishing vessels would of course have unrestricted access to the high seas within the Archipelago (of which it seems from such maps as we have there must be a considerable amount).

(ii) They would likewise have unrestricted access to islands not specifically excluded for defence reasons and also to the territorial waters surrounding them.

(iii) The possibility of limited access for fishing in the waters surrounding those islands excluded for defence use would be considered as and when the situation arises by the British and U.S. Governments, but would of course have to be subject to their overriding defence needs.

/Would

Sir John Rennie, KCMG, OBE,
Government House,
MAURITIUS

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would a proposition on these lines (and we should clearly have to fill in the details in consultation with the Americans) be likely to be acceptable to your Ministers?

4. Two matters to which more thought will have to be given are the related questions of territorial waters and fishing limits. These two are not necessarily the same thing. If current U.K. law were extended to the B.I.O.T., the effect would be that the Territory would

(a) adopt a twelve miles fishery limit drawn from base lines in accordance with the 1958 Territorial Sea Convention, granting "habitual fishing rights" between the six and twelve lines to Mauritius and to any other states whose vessels had fished in the area during the preceding ten years, and

(b) retain a three-mile territorial sea limit drawn from the same base lines.

5. It is however possible, as matters stand at present, that the U.K. could declare an exclusive fishing zone up to 9 miles beyond the three-mile belt of territorial sea. This would mean that Her Majesty's Government by exercising exclusive control of the fishing rights in this zone would retain the right to decide who should be permitted to fish in the area. Rights could thus be given e.g. exclusively to fishermen from Mauritius and Seychelles; or e.g. to any other country whose fishermen had operated in the area before; or on any other basis. However we understand that a similar exclusive fishery zone established in the waters of a Commonwealth country is possibly to be challenged in the International Court of Justice. If the Court's decision upheld this challenge the value of such a zone for B.I.O.T. would be greatly reduced and we cannot therefore place too much reliance on this possibility.

6. Your savingram under reference supplied the details we requested at the time, but before entering into further discussions here, we are very much concerned to keep in mind the importance of the fishing grounds to Mauritius, for instance the possible importance of fishing in Chagos as a source of food, in view of the rapidly increasing population. In view of the uncertainty of the position over fishing limits, as described above and of paragraph 4(a) above, it would be convenient to be able to base any special arrangements made for Mauritius (and Seychelles) on habitual or traditional fishing arrangements, provided that no other countries can claim similar use in the past. In these circumstances past and present performance is of considerable importance. We should therefore be grateful for any further information about the present activities of Mauritius companies at Chagos and also of the present activities (or future intentions) of fishing vessels of other countries (e.g. Japan). This will affect our discussion of this matter with the Americans and also be of importance in the context of possible protection of vested Mauritian rights against foreign interlopers.

7. I am sending a copy of this letter to Julian Oxford and shall be grateful for similar information and for any comments he may wish to make, insofar as the islands of B.I.O.T. which were formerly part of the Seychelles are concerned.

(A. J. Fairclough)

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Annex 54

Note by UK Foreign Office, "Presentation of British Indian Ocean Territory in the United Nations", 8 September 1966, FCO 141/1415

SECRET AND GUARD

IOC(66)136

8 September, 1966

POLITICAL AND FINANCIAL SERIES

STEERING COMMITTEE ON INTERNATIONAL ORGANISATIONS

PRESENTATION OF BRITISH INDIAN OCEAN TERRITORY IN THE UNITED NATIONS

(Note by the Foreign Office)

The attached brief has been prepared by the Foreign Office in consultation with the Commonwealth Office and Ministry of Defence.

Foreign Office, S.W.1.

8 September, 1966.

SECRET AND GUARD

SECRET AND GUARD

PRESENTATION OF BRITISH INDIAN OCEAN TERRITORY IN THE UNITED NATIONS

Documents: Hansard: House of Commons, 10 November, 1965 - Written by Mr. James Johnson to the Secretary of State for the Colonies.

B.I.O.T. Order in Council, 1965.

Brief to United Kingdom Mission - Foreign Office telegram to New York, No. 4361 of 10 November, 1965.

Fourth Committee debates of 16 and 25 November, 1965 (A/C4/SR 1558 and 1570).

General Assembly Resolution 2066(XX)

Secretariat Working Papers A/AC 109/L279 of 26 April, 1966 and Add. 1 of 10 August, 1966.

Provisional Summary Record of Sub-Committee I of the Committee of 24, 12 August, 1966 (A/AC.109/SC 2/SR 28).

I BACKGROUND

The British Indian Ocean Territory was constituted by Order in Council in November, 1965 "for the construction of defence facilities by the British and United States Governments". The islands which form part of the British Indian Ocean Territory had formerly been administered as dependencies of Mauritius and the Seychelles. £3m. compensation was agreed and has already been paid to the Government of Mauritius; in the case of the Seychelles it was agreed that a civil airfield would be constructed in compensation to the Government of that territory. There was opposition at the time in Mauritius from the Parti Mauricien on the grounds that the compensation was insufficient; it has been dormant in the last few months but could reappear as an issue in the forthcoming Mauritius elections. In the Seychelles, the leader of the Seychelles People's United Party, Mr. Rene, vociferously opposed the idea of American bases before agreement was reached with the Seychelles Government, but since then he has tried to steal credit for securing an airfield for the Seychelles and is unlikely to renew his opposition.

Geography, Present Population and Economic Activity

2. The new Territory consists of the Chagos Archipelago (formerly administered by the Government of Mauritius) and the groups of islands known as Aldabra, Farquhar and Desroches (formerly administered by the Government of Seychelles). Their populations have been estimated to be approximately 1,000 (of which about a half are found in the one island of Diego Garcia), 100, 172 and 112 respectively. (This

/population

population fluctuates and a recent United Kingdom official visitor to the Chagos Archipelago considers that the population is at present appreciably less.) The Chagos Archipelago is situated some 1,200 miles north-east of Mauritius and is in fact nearer to the Seychelles. Desroches is 120 miles south-west of the Seychelles, Farquhar 420 south-west and Aldabra is 500 miles south-west. (A convenient sketch map of United States origin, not necessarily to scale, is attached at Annex A.) Their previous administrative groupings are therefore largely an historical accident. When these islands were originally acquired by the Crown they were unpopulated but since the 19th century they have been developed privately as copra plantations on a small scale (except Aldabra, whose only economic asset is its turtle exports to the Seychelles).

3. The present population of these islands is, we believe, entirely, or almost entirely, of contract labour, or their dependants, from Mauritius or the Seychelles employed by the present owners of the land and living in housing provided by their employers and they have no interest in these islands other than in their jobs which they enter or renew on 18-month or two-year contracts. We believe that almost all of them are relatively short-term inhabitants, staying for longer or shorter periods (depending on whether they renew their contracts) but a former Colonial Secretary of Mauritius, Mr. Robert Newton, who conducted a survey of the islands in 1964 before their detachment estimated that there was a small number in one island viz. Diego Garcia who could be regarded as having their permanent homes there, either because they were second-generation inhabitants or because they have never left the island. His estimates are based on hearsay and because his is the only estimate available within the last five years, the relevant extract from his report is attached at Annex B.

Administration

4. The islands were hitherto very loosely administered from Mauritius and the Seychelles and were infrequently visited by the administrations of those two territories. Under the B.I.O.T. Order in Council 1965 the Earl of Oxford and Asquith, at present also Governor of the Seychelles is constituted the Commissioner of the B.I.O.T. and it is intended that a Resident Administrator will be appointed this year. Day-to-day administration of these islands has been in the past largely in the hands of the employers.

Future Use of B.I.O.T. and the Fate of its Inhabitants

5. No decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. Nevertheless a small British and United States party will visit Aldabra in September to survey its possible use as a site for a military airfield. The B.B.C. is also surveying Aldabra as a possible site for a radio relay station for the purpose of broadcasting to East Africa. For purely

/practical

practical reasons the B.B.C. and the defence survey parties will join forces. At one time the United States Government were interested in having a communications station on Diego Garcia. This requirement has now faded but they have recently expressed interest in possible naval facilities on a modest scale for which they wish to carry out a survey of Diego Garcia in late September or October, preferably with British participation.

6. There is therefore no immediate need to resettle the population of these islands but their evacuation might conceivably become necessary at six months notice should a military requirement of any of them arise. At present plans for the acquisition of the freehold rights in all these islands except Aldabra, which is occupied by a lessee of the Crown, are being considered and a Ministry of Defence representative has recently returned from a visit to these islands where he has investigated possible purchase prices with the owners. Draft legislation at present under consideration includes an immigration law, which would require that the inhabitants should be issued with entry permits and a land ordinance which would provide the Government with powers of compulsory acquisition should negotiations break down.

7. The present owners are apparently aware of the Committee of 24 interest in B.I.O.T. and according to the Ministry of Defence have pitched their prices in accordance with the political embarrassment which might ensue should negotiations break down. It is as yet too early to judge whether a voluntary settlement will be reached but there is no reason to believe that an accommodation will not be achieved.

8. The evacuation of the islands should not (so far as can be judged in the absence at present of a settled administration) cause insuperable difficulty. The Chagos Archipelago, in which there is the greatest concentration of people, are wholly owned by the Chagos Agalega Company, who also own the freehold in Agalega (which remains a dependency of Mauritius) where there are plans for expansion in copra production and where conceivably some resettlement might take place. From all accounts, none of the population would have a real interest in staying in the islands unless employers were to find them jobs there. In this sense there is no real community and the great majority should be happy with settled occupations elsewhere. The cost of their resettlement, which would need to be planned with the full cooperation of the Mauritius and Seychelles Governments would be met by Her Majesty's Government.

9. Although the separation of these islands was fully agreed with the Mauritius and Seychelles Governments no progress has so far been made in discussing the resettlement of the population in detail; nor is it really possible to make very definite plans until the appointment of an Administrator, probably this year, who could undertake the work of establishing the origin of the individuals concerned on the spot and of examining their claims. We would wish to establish that the inhabitants are all legally either Mauritians or Seychellois and one of the matters which will

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have to be raised with the Mauritian and Seychelles Governments is the question of their acceptance that the individuals in question have this status and their agreement to the issue to the inhabitants of passports of their country of origin. We would then envisage the issue of temporary residence permits by B.I.O.T. for those in the Territory. We should then have established a situation in which there were no individuals with claims on B.I.O.T. or without claims on either Mauritius or the Seychelles. We envisage no difficulty with the Governments of Mauritius and the Seychelles in carrying through these processes.

II OBJECTIVES

10. The primary objective in acquiring these islands from Mauritius and the Seychelles to form the new "British Indian Ocean Territory" was to ensure that Her Majesty's Government had full title to, and control over, these islands so that they could be used for the construction of defence facilities without hindrance or political agitation and so that when a particular island would be needed for the construction of British or United States defence facilities Britain or the United States should be able to clear it of its current population. The Americans in particular attached great importance to this freedom of manoeuvre, divorced from the normal considerations applying to a populated dependent territory. These islands were therefore chosen not only for their strategic location but also because they had, for all practical purposes, no permanent population.

11. It was implied in this objective, and recognised at the time, that we could not accept the principles governing our otherwise universal behaviour in our dependent territories, e.g. we could not accept that the interests of the inhabitants were paramount and that we should develop self-government there. We therefore consider that the best way in which we can satisfy these objectives, when our action comes under scrutiny in the United Nations, would be to assert from the start, if the need arose, that this territory did not fall within the scope of Chapter XI of the United Nations Charter.

12. An important consideration here is that one of the prerequisites of United States cooperation, financially or otherwise, is that they too should have freedom of manoeuvre and it is extremely doubtful whether they would be interested in remaining partners with us in developing facilities on these islands (no Agreement has yet been signed) if we had to regard the needs of the present transient population as paramount or if there were a legal basis for continuous scrutiny of our actions in the United Nations.

III TACTICS

13. So far, the United Nations has dealt with the subject of B.I.O.T. almost entirely in the context of Mauritius. In last year's Fourth Committee and General Assembly no

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cognisance was taken of the existence of B.I.O.T. as a separate entity and many delegations may not then have tumbled to the fait accompli of separation. General Assembly Resolution 2066(XX) dealt with B.I.O.T. en passant in the general context of Mauritius by simply noting with deep concern that any step to detach the islands "would be" a contravention of paragraph 6 of Resolution 1514(XV) and invited us to take no action which "would" dismember the territory and violate its territorial integrity. This year, however, there has already been separate mention of B.I.O.T. in the Secretariat Working Papers A/AC.109/L279 of 26 April 1966 and Add. 1 of 10 August, 1966 and the Russian representative in Sub-Committee I of the Committee of 24 has raised the subject of B.I.O.T. as a "bases" question.

14. The subject is bound to be raised again in the Committee of 24 shortly, possibly only in discussion of Mauritius or the Seychelles, or possibly in an attack on our use of the islands for strategic purposes. It is probable that a hostile resolution will be drafted. The resolution may simply deplore the fact of detachment but it may also claim that it is in contravention of the United Nations Charter and/or General Assembly Resolutions and may propose the establishment of some machinery (possibly a sub-committee or a visiting mission) to continue examination of the subject. Either in this way or (less likely) because we did not submit a separate return this year for B.I.O.T. in respect of 1965 under Article 73(e) of the Charter, we may be forced to accept or reject the application of Article 73 to the Territory this year. On the other hand, if discussion of B.I.O.T. results merely in a hostile resolution, which does not prejudice our case on the application of Chapter XI to the Territory, there may be no need to go into our attitude to the application of Chapter XI at present.

15. As a "bases" question, it would be unhelpful to make any explanation of our ideas of the strategic use of these islands and we cannot add anything to the statement that no decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. This remains our public position within or outside the United Nations though news of the joint survey party may get out at any time from now onwards.

16. Our case on the application of Chapter XI to the Territory is that for all practical purposes the territory does not fall within the scope of that chapter because it has no "peoples" or "inhabitants" as contemplated in Chapter XI. But the weakness of our case lies in

(i) a small number of inhabitants of Diego Garcia who might be regarded as a permanent population; and

(ii) the absence of voting rights in their parent countries of the Mauritians and Seychellois now resident in B.I.O.T.

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It is unhelpful to our case to draw attention to either of these weaknesses and in time when their numbers are known, when discussions about their future have taken place with the Mauritius and Seychelles Governments and when plans for evacuation and compensation have been made these weaknesses will disappear. We should therefore leave it to others to raise these matters.

17. Finally our general tactics, given the present uncertainties about use and evacuation, will better serve our objectives if we do not get drawn into a statement on our position on the application of Chapter XI, unless we are forced to do so either by direct question or where failure to do so now might prejudice our case on the non-applicability of Chapter XI in the future.

IV INSTRUCTIONS

18. If B.I.O.T. is raised as a "bases" question the Delegation should not depart from the formula that no decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. and the Delegation should not be drawn into any discussion of this subject. Separate instructions have been sent to the Delegation about this line (reference Foreign Office letter of 27 August, Brooke Turner to Trench, Washington, copied to United Kingdom Mission New York) which do not however invalidate this formula. Further instructions will be sent if developments make this necessary.

19. If we are forced to make our position clear on the application of Chapter XI to the Territory, the Delegation should say:-

> "Chapter XI of the Charter applies to 'territories whose peoples have not yet attained a full measure of self-government'. As there are no 'peoples' in the British Indian Ocean Territory who could attain self-government it is apparent that Chapter XI has no application to that territory. Those who go to the B.I.O.T. are a migratory force who go in accordance with the demand for their labour. Their numbers fluctuate and at most reach at times 1,500. They are, as they were before the establishment of the Territory, estate managers, officials and labourers from Mauritius and the Seychelles. They may stay in the territory for greater or lesser periods depending on whether they renew their contracts or not, but this does not alter their essential character as a migratory labour force."

20. If asked about the future of the labour force the Delegation should say that no decisions have yet been taken affecting the future of those who are now in the Territory for the purposes of their work but, when decisions are taken full regard will be paid to their welfare.

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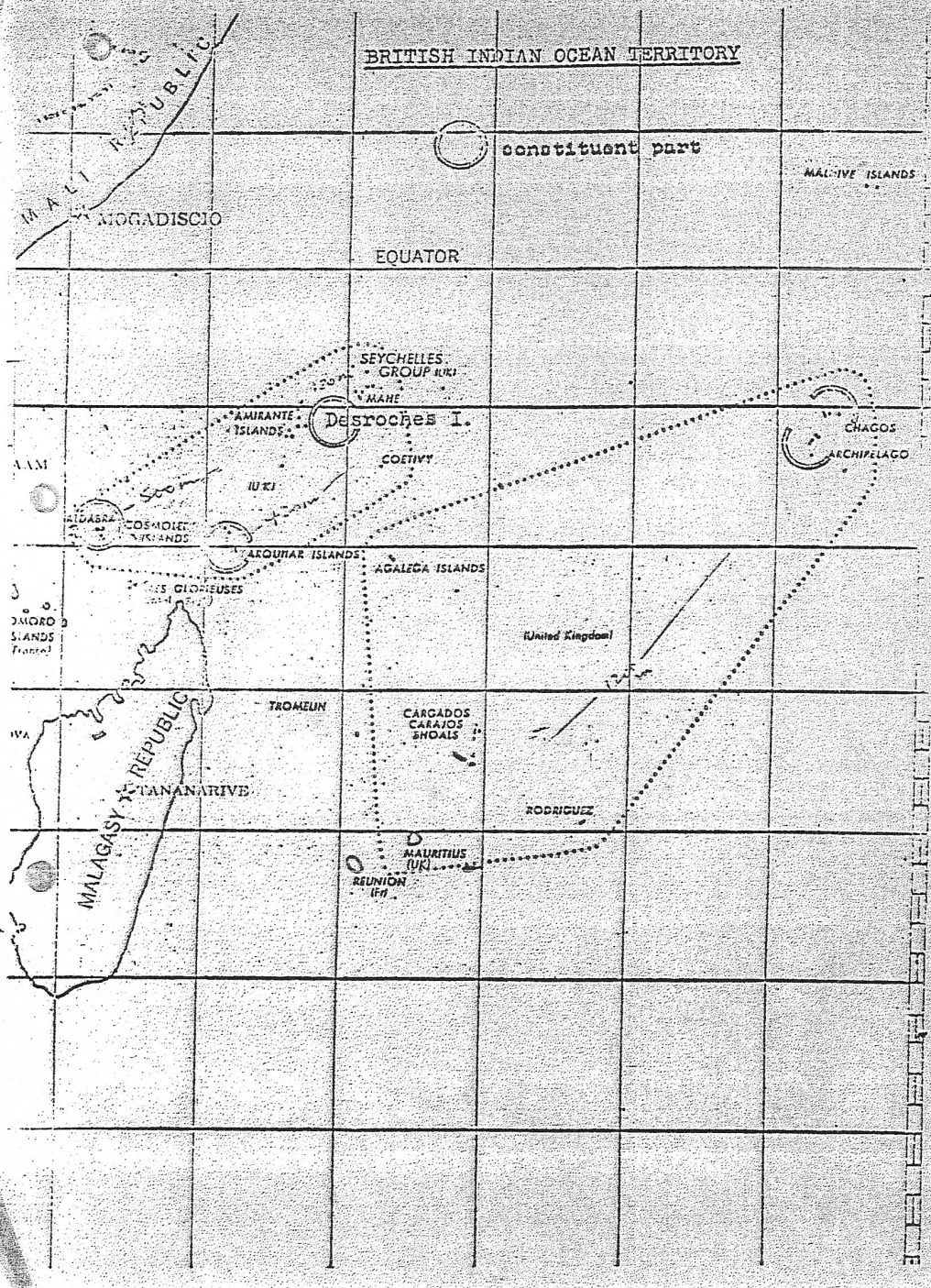
21. The Delegation should avoid any discussion of belonger rights and if presed about the numbers who have lived there for any length of time the Delegation should say (genuinely) that we do not have available any precise records of the length of stay of individual families. The Delegation should refuse to be pressed any further and if asked to find out should undertake to report what was said in the debate.

22. If pressed on the question of voting rights of the present labour force in the B.I.O.T. in Mauritius or the Seychelles the Delegation should say that the position remains as it was before these islands were separated from Mauritius or the Seychelles and that the question whether or not they can vote in an election is determined in accordance with the laws of Mauritius and the Seychelles affecting who has and who has not the right to vote there.

23. The above formulae have been drafted with care and have Ministerial authority. The Delegation should not depart from their wording therefore without seeking further instructions.

Annex A



SECRET ANNEX B

Extract from Mr. Robert Newton's Report 1964

DIEGO GARCIA

"24 ... There is certainly little trace of the sense of a distinct Diego Garcian community described by Sir Robert Scott in his book "Limuria". Sir Robert Scott holds that "the physical characteristics of the island have made the Diego Garcians more down and hard-headed than the residents in the other islands." They are said to be "more diligent in supplementing their basic rations and their cash resources than the other islanders." In the postcript to his book Sir Robert Scott discusses the impact of change and makes a plea "for full understanding of the islanders' unique condition, in order to ensure that all that is wholesome and expansive in the island societies is preserved."

25. Sir Robert Scott's visits took place nearly ten years ago. It is already apparent that already little is left of the distinctive life of Diego Garcia which he described. Judging by conversations with the manager, and with others on the island, most of the inhabitants of Diego Garcia would gladly work elsewhere if given the opportunity. The doctor on Dampier, Surgeon-Lieutenant Maclean, who spoke French well and spent ten days on the island, endorsed these comments on Sir Robert Scott's observations. At the time of the survey there was little evidence of any real sense of a distinct community evolved by the special local environment. Since four-fifths of the labour force are Seychellois under 2-year or 18-month contracts, the evocation of a distinctive attitude to life from the appearance of a chance-met individual on Diego Garcia is hazardous. Difficulties in establishing the paternity of some children was a further indication of a loose social structure - since it could not be attributed to the evolution of a matriarchal society. There are grounds for the conclusion that life on Diego Garcia evolved to meet the special conditions of the 19th century and that attachment to the island in recent years was fostered by the easy-going ways of the old company rather than to the island itself. The impact of the new company has loosened the old ties and if there is a distinctive way of life on the islands it is Seychellois rather than Mauritian being African in origin and evolved round the coconut palm.

26. Of the total population of Diego Garcia, perhaps 42 men and 38 women, with 154 children, might be accepted as Ileois. According to the manager 32 men and 29 women made relatively frequent visits to relatives in Mauritius and perhaps no more than 3 men and 17 women, including a woman of 62 who had never left Diego Garcia, could really be regarded as having their permanent homes on the island. The problem of the Ileois and the extent to which they form a distinct community is one of some subtlety and is not within the grasp of the present manager of Diego Garcia. But it may be accepted as a basis for further planning that if it becomes necessary to transfer the whole population there will be no problem resembling, for instance, the Hebridean evictions. Alternative employment on a new domicile under suitable conditions elsewhere should be acceptable."

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RESTRICTED

STEERING COMMITTEE ON INTERNATIONAL ORGANISATIONS

PRESENTATION OF BRITISH INDIAN TERRITORY IN THE UNITED NATIONS

Corrigendum to IOC(66)136

Page 1, Line 4. After "Written" insert "P.Q."

Page 1, Line 21. After "which" delete "form part of" insert "constitute".

Page 2, paragraph 3, line 2. After "or almost entirely", insert "composed".

Annex B.

Paragraph 24, line 4, delete "down" insert "downright".

Foreign Office, S.W.1.

9 September, 1966

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SECRET & GUARD.

Annex 55

United Nations General Assembly, Report of Sub-Committee I: Mauritius, Seychelles and St. Helena, UN Doc. A/AC.109/L.335, 27 September 1966

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
LIMITED

A/AC.109/L.335
27 September 1966

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

REPORT OF SUB-COMMITTEE I

MAURITIUS, SEYCHELLES AND ST. HELENA

Rapporteur: Mr. Rafic JOUEJATI (Syria)

CONTENTS

INTRODUCTION

1. The Sub-Committee considered Mauritius, Seychelles and St. Helena at its 28th, 29th, 30th and 32nd meetings held on 12 August, 9, 12 and 19 September 1966.

2. The Sub-Committee had before it the working papers prepared by the Secretariat (A/AC.109/L.279, Add.1 and Add.1/Corr.1).

3. In accordance with the procedure agreed upon by the Special Committee, the Chairman invited the representative of the United Kingdom of Great Britain and Northern Ireland to participate in the consideration of the three Territories. Accordingly, the representative of the United Kingdom participated in the 29th, 30th and 32nd meetings of the Sub-Committee.

CONSIDERATION BY THE SUB-COMMITTEE

A. Statements by members

4. The representative of the Union of Soviet Socialist Republics recalled that the situation in Mauritius, Seychelles and St. Helena had been studied very thoroughly by the Sub-Committee, the Special Committee and the General Assembly in 1964. That study had revealed the true situation in those Territories and had shown that the administering Power had not applied to them the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples but, on the contrary, had done everything possible to retard their attainment of independence.

5. The economic and social status of the inhabitants of the islands was deplorable. The administering Power had deprived them of the wealth which was theirs by right and, by granting concessions to foreign monopolies, had made it impossible for them to progress economically. In Mauritius and Seychelles, for example, two thirds of the arable land had been turned over to groups of planters. Without land, the inhabitants were forced to seek work on the plantations at starvation wages or else rent land. The economy was still very largely based on a single crop, which made the Territories entirely dependent on the metropolitan country. The inhabitants' standard of living was declining. The population was reduced to despair, and discontent was growing daily. In May 1965, serious

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disturbances had broken out in Mauritius, where the economic situation was steadily deteriorating, and the administering Power had used the Army to suppress the protests. In June 1966, a strike had been called in the Seychelles and the United Kingdom Government had brought in military units from Aden to disperse the strikers and prevent them from expressing their discontent. It was thus apparent that the administering Power was ignoring the recommendations of the General Assembly and the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Special Committee and the General Assembly should therefore continue to study the question and formulate recommendations calling upon the United Kingdom to take prompt action to enable the Territories to attain independence immediately in accordance with the provisions of General Assembly resolution 1514 (XV).

6. The negative attitude of the administering Power was based on strategic considerations. The establishment of the new British Indian Ocean Territory, which would form the basis of a United Kingdom-United States security system, was a threat directed against the new countries of Africa and Asia, and it fully justified the fears expressed by the non-aligned countries at the Cairo Conference. The inhabitants were opposed to the idea of transforming the Territories into defensive bastions intended not only for the suppression of the nationalist movements in the islands themselves but also for use by the colonialists against those who were fighting for freedom in that part of the world. A petition (A/AC.109/PET.321) from the President of the Seychelles People's United Party protested against the construction of a military base, and, according to paragraph 33 of document A/AC.109/L.279, demonstrations had been held in Mauritius for the same purpose. According to The Times of London of 14 February 1966, an air base was to be built on Ascension Island; an article published in the American magazine Time on 19 December 1965 had stated that certain nearby atolls might be used as a base for submarines equipped with Polaris missiles. The Indian people, among others, were aroused at the prospect that new hotbeds of aggression would be created in the Indian Ocean, for those plans threatened not only the independence of certain peoples but also world peace. According to paragraph 34 of the document in question, the United Kingdom Government did not propose to modify its scheme to convert the islands into a military base. The United Kingdom was thus in effect

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hurling a challenge at the United Nations, for it was not only doing nothing to apply the Declaration embodied in resolution 1514 (XV) but also failing to respect the territorial integrity of the islands and defying the provisions of the resolution calling for the dismantling of military bases. One had only to read the Press to see that the United Kingdom was being encouraged by the United States and other imperialist Powers; during the Washington talks held earlier in the year between the United Kingdom Foreign Secretary and the United States Secretary of State concerning the development of military bases, the Australian Government had announced that large sums were to be allocated for military construction in Papua and New Guinea.

7. In order to eliminate colonialism as quickly as possible from Mauritius, Seychelles and St. Helena, his delegation suggested that the Sub-Committee should recommend the Special Committee to take decisions to the effect that: (1) the right to self-determination and independence of Mauritius, Seychelles and St. Helena and their dependencies should be reaffirmed; (2) elections should be held on the basis of universal adult suffrage; (3) following such elections, representative bodies exercising full powers should be established; (4) all land should be restored to the indigenous inhabitants; (5) the right of the indigenous inhabitants to dispose of all the natural resources of their Territories should be preserved; (6) military bases should be removed; (7) all agreements imposed on the Territories which limited the sovereignty and fundamental rights of the peoples concerned should be abrogated; (8) enterprises of the metropolitan country should refrain from any actions prejudicial to the integrity of the Territories; (9) any use of military bases should be condemned.

8. His delegation would support any recommendations which the Special Committee might adopt with a view to attaining those ends.

9. The representative of Syria noted that, despite the clear and straightforward recommendations made by the Sub-Committee in 1965 and subsequently adopted by the Special Committee, the question of Mauritius, Seychelles and St. Helena had to be taken up once again, because the administering Power, notwithstanding its disclaimers, was not yet willing to transfer full powers to the democratically elected representatives of the inhabitants. He did not believe that the reason for the delay was a desire for a better preparation for independence and self-determination. In fact, the administering Power had made but small contribution

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to accelerating the process of emancipation; it surrounded the idea of independence with all sorts of conditions which cast doubt on its good faith. The reforms which had been introduced in recent years were due entirely to the initiative and toil of the indigenous Government. In reality, during 156 years of British rule, nothing significant had been done to provide for the welfare of the masses of the people, who were exposed to extremely unfavourable meteorological conditions, to spread education or to prepare in the Territories cadres sufficiently enlightened to assume the responsibilities of government, development and industrialization.

10. He submitted that the United Kingdom Government's motives were twofold: to assure the permanence of the privileges of the tiny minority of settlers, and to use the Territories for strategic purposes against the wishes of the people of those islands and of the surrounding areas. Syria regarded the information given by the USSR representative on the Anglo-American plan to establish military bases in the Garcia Islands as extremely serious; the Special Committee should thoroughly investigate the matter and weigh its gravity.

11. Why, after all, did the administering Power wish to maintain the obsolete institution of the Governor, who was foreign to the country and foreign to its culture, its outlook and its aspirations, who appointed and dismissed unbound by the advice of the Public Service Commission, who robbed the indigenous representatives of their legitimate right to care for their own internal security and external affairs and who, while he was supposed to act in accordance with the advice of the Executive Council, was nevertheless authorized to act against its advice?

Why should more than one quarter of the national representatives be nominated by the Governor, and not elected by the people, and why should the Governor, and not the representatives themselves, select the Speaker of their Assembly? Why should he have the last say on expenditure, when the island needed large funds for development? Why should bills require his assent and, worse still, why could a bill rejected by the Legislative Council be put into effect by him if he considered it expedient?

Of course, the administering Power had a ready answer to those questions: the country was not yet independent, it was only in the experimental stages of

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internal self-government. Naturally, the administering Power, invoking apparently plausible reasons of balance, objectivity and reason, wanted it to be believed that the Territories were not ready for independence and self-determination. The Special Committee was very sceptical about the alleged pace of preparation undertaken by the administering Power; moreover, it firmly believed that the problems of poverty, under-development, illiteracy, cleavage between rich and poor and social injustice could not be solved by the administering Power, but would be overcome by the inhabitants themselves when they were independent and could freely decide their own future, their own form of government and the best way of meeting their own needs and when they would receive assistance from the community of nations in equality, equity and dignity. Credence should be given to the Chief Minister, Mr. Ramgoolam, when he asserted that the country should have achieved independence by the middle of 1964, and not to the administering Power, which invoked the need for a process of constitutional progress as a pretext for the continued denial of legitimate rights to the peoples in question.

14. The representative of Mali stated that the situation in Mauritius, Seychelles and St. Helena was a subject of serious concern to his Government. In Mauritius, there was a racial problem which the administering Power had kept alive with a view to perpetuating its domination, in accordance with the principle "divide and rule". It was in obedience to that principle that the United Kingdom Government had appointed the Banwell Commission to make recommendations on the electoral system.

15. Mali believed that the constitution of a country and all related questions were essentially matters for that country's people to decide. The administering Power had no right to make self-government and independence for the Territory conditional on full agreement among the political parties concerning a constitution which did not meet the legitimate aspirations of the indigenous inhabitants. In his view, the setting up of the Banwell Commission was simply a manoeuvre designed to perpetuate the United Kingdom presence in the Territory simply in order the better to exploit its wealth and its people; for while the attention of the Mauritians was centred on constitutional problems, the British companies were continuing to pillage the country, whose economy was in a catastrophic condition. Mauritius could not be considered in isolation in that connexion; attention must

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also be given to conditions in Seychelles and St. Helena, whose climate, owing to their geographical position, was ideal for diversified cultivation. Yet sugar plantations covered a total of 215,800 acres and tea plantations 6,600 acres, leaving only 17,600 acres for other food crops, and the Mauritians, and for that matter the inhabitants of Seychelles and St. Helena also, were forced to import food-stuffs from the United Kingdom and elsewhere. Thus, the decline of the Mauritian economy noted in the working paper was not surprising. In the fourth quarter of 1965, the public debt had amounted to 264 million rupees, or 18 million rupees more than in the corresponding quarter of 1964. That loss to the Territories swelled the excessive profits of the British companies, and that was why the administering Power was refusing to allow self-government and independence for the Territories. Sugar exports had fallen from 334.2 million rupees in 1964 to 289.7 million rupees in 1965, while the profits of the British companies were on the increase. Meanwhile there was heavy unemployment in the island and the Government was advising the indigenous inhabitants to go abroad to work, so that it could make greater military use of the island. He remembered the statement made by the petitioner concerning the intention of the United Kingdom and the United States to turn the island into a military base for aggression. It was interesting to recall the United Kingdom Prime Minister's recent statement that any Power called upon to participate in United Nations peace-keeping operations would have to be on the spot or in a position to go there, and that the United Kingdom could not ignore the fact that its partners wanted it to be able to exert enough influence in Asia and Africa to neutralize existing or potential centres of infection. According to the Prime Minister's own words, the United Kingdom Government had sought to abandon the system of large military bases in populated areas and to establish itself in areas which were virtually devoid of indigenous inhabitants and from which its forces would be able to move to the theatre of operations rapidly and at minimum expense. That statement, especially if it was recalled what had happened in Ascension Island two years previously, needed no comment.

16. Mali was opposed to military bases which were meant for aggression and which prevented the peace-loving peoples of the Territories, notably Mauritius, Seychelles and St. Helena, from enjoying their right to self-determination and

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independence. Consequently, his delegation again appealed to the administering Power to fulfil its obligations by enabling the indigenous people to attain independence, in accordance with their freely expressed desire, in the best conditions. The constitutional problem should not prevent the granting of self-government in the near future, since the Territory must attain independence as soon as possible. The establishment of the military base in the area was an unlawful act. The United Kingdom should dismantle the base and replace it with hospitals and schools, which the people certainly needed much more.

17. The representative of the United Kingdom said he assumed that the statement made by the Soviet Union representative at the 28th meeting of the Sub-Committee on 12 August, as it appeared in the provisional summary record, would be extensively rewritten. The new arrangements for the administration of certain small islands represented an administrative readjustment freely worked out with the Governments and elected representatives of the Territories concerned. No decisions had yet been reached by either the United Kingdom Government or the United States Government on the construction of any facilities anywhere in the British Indian Ocean Territory.

18. Since the representative of the Soviet Union had suggested that the Sub-Committee should recommend the Special Committee to take steps to ensure that all land was restored to the indigenous inhabitants of those Territories and that the rights of those inhabitants to dispose of the natural resources of the islands were preserved, he recalled that the United Kingdom delegation had already pointed out that the first human inhabitants of Mauritius and the Seychelles had come from France and those of St. Helena from the United Kingdom. He wondered whether the indigenous inhabitants to whom the representative of the Soviet Union was referring were the dodos and tortoises - the sole occupants of the islands before the Europeans had arrived.

19. At the twentieth session of the General Assembly, the Fourth Committee had discussed the question of Mauritius. The Electoral Commission, established in December 1965, under the chairmanship of Sir Harold Banwell, had recommended in February 1966 that there should be twenty three-member constituencies for Mauritius and one two-member constituency for Rodriguez, giving a total of sixty-two seats to be filled by direct suffrage. Five additional "corrective"

seats would be filled, to be allocated, one at a time, to the party which had the highest average number of votes per seat won; a "good loser" candidate of that party, belonging to the community least well represented, would then be declared elected. These "corrective" seats, however, would be awarded only to parties which had secured 10 per cent of the total poll and had won at least one constituency seat. Also, under a "variable corrective", any party with 25 per cent of the votes should have its seats increased up to 25 per cent if necessary by the appointment to the Legislature of the requisite number of "good losers". The United Kingdom Government had accepted the Banwell Commission's recommendations in full, but the three parties forming the Coalition Government had protested. Only the leader of the Opposition party, the Parti Mauritien Social Democrate, had welcomed the report. Most of the opposition had been directed towards the "correctives", i.e., the measures designed to provide assurances to minorities on the island that they would be adequately represented in Parliament and therefore that the main clauses of the Constitution should not be amended without their agreement.

20. In the course of a visit to Mauritius by a British Minister, full agreement among all political parties had been reached on a system of seventy seats in twenty three-member constituencies; sixty members would be elected by block voting (each voter being obliged to cast his full three votes). Two members would be elected for Rodriguez by block voting. In addition, there would be eight "best loser" seats. The first four such seats would be reserved, irrespective of party, for communities under-represented in the Legislative Assembly after the constituency elections. The remaining four "best loser" seats would be allocated on the basis of party, without any qualifying requirement for a minimum number of seats or votes. That system would guarantee the fair distribution of seats among the various communities, on the one hand, and the different parties, on the other. Registration was due to begin on 5 September, but because of Ramadan the elections could not be held before February 1967. If a majority of the new Legislature favoured independence, Mauritius would therefore be able to achieve independence after six months of internal self-government, i.e., during the summer of 1967.

21. Pursuant to the Banwell Commission's recommendations, a team of observers from Commonwealth countries had been established under the chairmanship of

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Sir Colin McGregor, formerly Chief Justice of Jamaica. Some of them would be present in Mauritius from the outset of the registration of electors.

22. The establishment of the Banwell Commission had not been in any sense a delaying manoeuvre, as the representative of Mali had implied, because agreement had finally been reached and independence was conditional upon the outcome of the elections. That had been the most appropriate procedure, because of the divisions of opinion concerning the ultimate status of the Territory. The United Kingdom Government continued to regard independence as the right solution and would take all possible steps to ensure that Mauritius became independent as soon as possible.

23. He pointed out in connexion with the paragraphs of document A/AC.109/L.279/Add.1, which referred to economic conditions in Mauritius, that 1963 had been in some respects an exceptional year with a record production of sugar and very high exports because of the international sugar shortage during that year. In fact, the receipts from sugar exports in 1964, although lower than those in 1963, had still been well above those in 1961 and 1962. Again, sugar production in 1965 had shown an increase compared with 1964. The Mauritius and United Kingdom Governments had taken measures to maintain the pace of economic development in Mauritius. In addition to receiving grant funds ($US6.7 million allocated for development for 1965-68 and nearly $13 million in further grants and loans for cyclone reconstruction), it should be remembered that Mauritius enjoyed an outlet at guaranteed preferential prices under the Commonwealth Sugar Agreement (currently more than £47 a ton compared with the world price of about £17); the preferential price applied to an estimated 75 per cent of Mauritius sugar exports.

24. With regard to the Seychelles, he drew attention to the main developments since July 1964 and in particular to the exchange of dispatches between the Colonial Secretary and the Governor, a useful summary of which was to be found in document A/AC.109/L.279 (para. 75). The Legislative Council had asked the United Kingdom Government for a response to its proposal that the Territory should remain British or be integrated with Britain. The Colonial Secretary had replied acknowledging the Council's desire for no change in the present relationship and suggesting that the Territory should now drop the minor qualifications for voting and move to universal suffrage. He also suggested apportioning departmental

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responsibilities to non-official members of the Executive Council and the appointment of a Constitutional Commissioner who would visit the Seychelles and consult all shades of opinion, including parties and individuals, before reporting on the future constitutional evolution of the Territory. The Commissioner had accordingly been appointed and had visited the Seychelles and submitted his report, which was under consideration. A strike had taken place in the Seychelles, but the strikers had returned to work, having accepted an interim-wage award equivalent to an 11.1 per cent increase. His delegation thought that that information should answer the Syrian representative's questions concerning low wages in the Seychelles.

25. The Seychelles were receiving under the Colonial Development and Welfare Acts increased assistance in grants, part of which had been allocated towards development schemes ($3.36 million for 1966-68) and the remainder towards the Seychelles budget.

26. There had been a number of major economic and social developments in St. Helena since 1964, which were briefly described in document A/AC.109/L.279/Add.1. Government labourers had received a pay increase of 90 per cent with effect from July 1965. That had caused the collapse of the flax industry but had not caused unemployment, owing to the other employment opportunities available.

27. The Governor of St. Helena had transmitted to the Colonial Secretary a dispatch in which he had referred to consultations which had taken place with a representative cross-section of the community in regard to possible further constitutional advance. The Advisory Council had adopted a resolution welcoming the proposed revisions of the Constitution and asking the United Kingdom Government for approval. Under the proposals, which had been almost unanimously agreed among the inhabitants of the Territory, the Advisory Council would be replaced by a Legislative Council which would include four additional elected members, bringing the total number of these to twelve. The Council would also have six nominated non-officials and two nominated officials. The Council would enact legislation, the Governor possessing certain reserve powers for use in exceptional circumstances. He would appoint committees of the Council as appropriate and delegate powers and departmental responsibilities to them. Those committees would include special experts as necessary and a majority of members drawn from the Legislative Council. The Executive Council would consist of two officials and the chairmen of the Legislative Council committees. The Public Service would remain the responsibility

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of the Governor. The Governor had expressed his belief that those changes would enable the people of the Territory to take a much more effective and responsible part in the regulation of their own affairs.

28. The Territory already had universal adult suffrage and elections had been held in 1963. Significant and progressive developments had thus taken place in the political and constitutional evolution of the three groups of islands, in each case with the full participation and in consultation with the peoples of the Territories themselves and their democratically elected representatives.

29. The representative of the Union of Soviet Socialist Republics said that the United Kingdom representative's statement was intended only to confuse and to keep the United Kingdom Government from having to say what it intended to do to carry out the resolutions of the General Assembly and the Special Committee. The United Kingdom representative had spoken at length about the constitutional changes, the establishment of an electoral system and appropriate legislation, as though such matters were central to United Kingdom policy. The USSR delegation wished to state categorically that the changes in the Constitution were a matter for the people alone to decide and to ask the United Kingdom to cease manoeuvring to prolong colonial domination and to remove all obstacles to its termination, for it was time to grant the peoples the independence to which they were undeniably entitled.

30. The United Kingdom representative had tried to refute the USSR delegation's remarks by saying that no agreement had been signed between the United Kingdom and the United States regarding the financing of the base in the Chagos Archipelago, but he had been careful to say nothing about the fact that work had already started on the base. The USSR delegation had not invented those facts; the information mentioned in the Special Committee and the Sub-Committee had been published in the United Kingdom and United States Press and could easily be checked. Indeed, the Press had revealed that the United States was bringing pressure to bear on their partners to remain east of Suez and carry out their obligations there. Those "obligations" were to police that part of the world. There had been reports in the United States and the United Kingdom Press that talks had taken place between the United States and the United Kingdom and an agreement had been signed giving responsibility for most of the bases east of Suez to the United States, which undertook to pay for the installation of the base in the Chagos

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Archipelago. It was difficult to see why the Press of the two great Western Powers should publish the information if no such agreement had been signed. If the United Kingdom persisted in its denials, it would be easy to demonstrate the truth by sending a mission of inquiry to the spot, as the Syrian representative had proposed; but the USSR delegation feared that the news was well-founded and that all the information about the base was correct.

31. As to the original inhabitants of Mauritius, the turtles and the dodos, the United Kingdom had not told USSR representatives anything they had not known and they had replied to its comments. As the United Kingdom delegation had brought up the subject of ornithology, however, he would remind it that other birds than dodos, birds with a larger wing-span, now swept over the Non-Self-Governing Territories, and were used by the colonialists to terrorize the subject peoples. There had been talk quite recently about those that had flown over Ascension Island. The United Kingdom representative had apparently been instructed to repeat the specious arguments that had been advanced the previous year, but there was certainly much more to be said about those modern birds, a species which was neither extinct nor becoming extinct; the 1965 and 1966 summary records were very instructive on the subject.

32. The representative of Mali said that although the electoral system described by the United Kingdom representative, which the administering Power wished to introduce into Mauritius, was very complex - he himself had difficulty in understanding it properly - he welcomed the fact that the report of the Banwell Commission had been approved by all the political parties and that the elections would enable the Territory to attain independence beginning in the summer of 1967.

33. The representative of Syria agreed with the representatives of the USSR and Mali that the fundamental question was how the United Kingdom intended to apply General Assembly resolution 2069 (XX).

34. The possibility of the United Kingdom and the United States installing military bases caused concern in Africa and the Middle East, particularly as bases of that kind had recently been the starting point for acts of aggression that had been condemned by the United Nations. The representative of the administering Power had stated that there was no agreement between the two countries at present, but negotiations were apparently under way; he would like to know whether the indigenous population was represented in the negotiations, and if so by whom.

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35. Constitutional development must be freely decided on by the inhabitants. The representative of the administering Power had said that when representatives had been elected by the electoral system it had proposed, they would decide the question of independence. He would like to know when the Legislative Assembly which was to be elected would meet and take such a decision. He also wondered how the problem of the different ethnic groups was to be overcome by the proposed electoral system.

36. As he had pointed out earlier, Mauritius was subject to economic difficulties because of its bad climate; and the local housing was not sufficient protection from the elements.

37. The representative of Tunisia wondered what might be the advantages of such a complicated, not to say peculiar, electoral system as the one proposed for Mauritius and described by the United Kingdom representative. Would national unity really be possible under such a system? Would not elections on the basis of universal suffrage be preferable?

38. The representative of the United Kingdom said that the proposed electoral system for Mauritius was not so complicated as some members of the Sub-Committee thought. Of the seventy seats provided for, sixty-two were to be filled by normal universal suffrage; only the remaining eight were "best loser" seats and were intended to ensure that the minority groups would be represented in the Legislative Assembly. As everyone knew, the system, proposed by the Banwell Commission, had been accepted by all the political parties of the island, after two unsuccessful experiments and after action by the Secretary of State for the Colonies. Replying to the Syrian representative's question, he said that he had already stated in his report that the Legislative Assembly would meet immediately after the elections, or about February 1967; Mauritius would then be able to ask for independence if it so wished.

39. The representative of Syria asked whether the eight "best loser" seats would be filled by representatives of the island's Chinese and Muslim population.

40. The representative of the United Kingdom replied that it had been decided not to set aside special seats for particular minorities or communities, but that the new electoral system had been framed so as to ensure their fair representation. The new system was less complicated than might appear and above all it commanded general agreement among all the Mauritius political parties.

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41. The representative of Tunisia recalled that the question of Mauritius, Seychelles and St. Helena had already been considered by the Special Committee and had also been the subject of General Assembly resolutions 2066 (XX) and 2069 (XX). Those resolutions reaffirmed the inalienable right of the people of those Territories to freedom and independence and invited the administering Power to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV).

42. Recalling that the United Kingdom representative had outlined the future of the islands at the previous meeting, he expressed the hope that the proposed electoral system would not have the effect of accentuating racial differences in the Territories but might, on the contrary, promote the interests of the various sectors of the population. Nevertheless, a serious economic and social problem remained. The main features of the economy of Mauritius, Seychelles and St. Helena, which was rudimentary and colonial in nature, were a heavy loss of revenue, the impossibility of increasing employment and the impossibility of bringing payments into balance, because exports were less than imports. The situation was so unsatisfactory that 3,250 workers had gone on strike in the Seychelles on 13 June 1966, and the administering Power had had to use troops to break the strike.

43. In addition, while resolution 2066 (XX) invited the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, it was clear that such dismemberment had already taken place. On 10 November 1965, the Secretary of State for the Colonies had stated that new arrangements had been made, with the agreement of the Governments of Mauritius and Seychelles, for the administration of the Chagos Archipelago and of Aldabra, Farquhar and Desroches. Those Territories, which had formerly been administered by the Governments of Mauritius and Seychelles respectively, were now called the British Indian Ocean Territory, and the United Kingdom and United States Governments would be able to construct defence facilities there. The administering Power had therefore dismembered Mauritius and Seychelles in order to set up a military base on the islands. The establishment of such bases in countries which were still colonized was reprehensible in every respect, and he recalled that his own country had experienced the same problem with the base of Bizerta. The Sub-Committee should therefore recommend to the Special Committee that it should invite

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the administering Power to take steps to implement resolution 1514 (XV), to lead the populations of the islands to independence, to abandon the plan to dismember Mauritius and Seychelles and to install military bases there, and to permit and encourage the sending of United Nations visiting missions to the Territories.

44. The representative of the United Republic of Tanzania said that the United Kingdom representative's statement at the previous meeting seemed to mean that, because they had been uninhabited when the French and the English had arrived, Mauritius, Seychelles and St. Helena belonged to nobody. Without going into detail on that matter, he believed that the inhabitants of the islands, whatever their origin, were none the less subjected to colonial domination. It was precisely that domination, depriving them as it did of the right to choose their own form of government, which the Government of the United Republic of Tanzania condemned. There had been nothing new in the statement of the United Kingdom representative: he had merely avoided the main issue, the obligation to allow the populations of those Territories to exercise their right of self-determination. There could be no possible doubt on that matter: that obligation was one of those laid upon the administering Power both by resolution 2066 (XX) on Mauritius and by resolution 2069 (XX) on, inter alia, the Seychelles and St. Helena. So far as the latter Territories were concerned, resolution 2069 (XX) also requested the administering Power to allow United Nations visiting missions to visit the Territories, and to extend to them full co-operation and assistance. Those were perfectly natural requests and there should be no difficulty in implementing those resolutions if the administering Power were to honour its obligations and respect the decisions which the General Assembly had taken in accordance with the Charter. But what had happened since the adoption of those resolutions? The Chagos Archipelago had become part of the new British Indian Ocean Territory. That decision had been taken scarcely a month before the adoption of General Assembly resolution 2066 (XX), which invited the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity. The present situation therefore made it highly unlikely that Mauritius would accede to independence in 1966, as had been envisaged. Instead of implementing the General Assembly resolutions, the United Kingdom Government had endeavoured to delay the important steps which it should have taken by forming an electoral commission, which had

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produced what might be called a scientific constitution. The strong opposition to that strange constitution was therefore quite natural, and indeed it was most unlikely that the United Kingdom Government had ever expected the Mauritians to accept it. In that connexion, the agreement which had been reached between the Under-Secretary of State for Colonies and opposition representatives in Mauritius was of no significance because there was no evidence that the discussions had been held freely. The United Kingdom Government should remember, however, that every time it had endeavoured to draw up the constitution of one of its former colonies without taking due regard of the interests of the population, those constitutions had always come to nought and had been replaced by genuinely democratic instruments.

45. The manner in which the British Indian Ocean Territory had been set up and the haste with which it had been done could not but engender suspicion. His delegation had reason to believe that the Territory was to become a military base. Apart from the threat posed by such bases to neighbouring countries in the event of war, the example of Ascension Island, which had been used by mercenaries as a base for attacking the Congolese freedom-fighters, could not be forgotten. The Special Committee should therefore aim at guaranteeing the territorial integrity of Mauritius, Seychelles and St. Helena, and ensuring that they would not be used for military purposes.

46. The economic situation of those Territories was scarcely satisfactory at the moment. There had been a considerable decline in both agriculture and industry, which in 1964 had represented 24 and 15 per cent, respectively, of the gross national product of Mauritius, while unemployment was increasing rapidly. Monoculture should therefore be abandoned on Mauritius, as well as on Seychelles and St. Helena, if social disturbances were to be avoided. While it was doing nothing to stop the Southern Rhodesian Government from depriving 4 million Africans of the right to rule their own country, the United Kingdom Government had seen fit to send two warships to the Seychelles to compel strikers to resume work.

47. In conclusion, he hoped that reason would prevail and that the administering Power would eventually leave the peoples of Mauritius, Seychelles and St. Helena to rule their country as they wished.

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48. The representative of Yugoslavia recalled General Assembly resolution 2066 (XX) on the question of Mauritius, in which the Assembly had, in particular, invited the administering Power to take no action which would violate the integrity of the Territory; the Assembly had likewise adopted resolution 2069 (XX) concerning a number of small Territories, including Seychelles and St. Helena. It seemed that, in spite of the provisions of those resolutions, the administering Power had not only failed to take effective measures for ensuring the independence of those Territories, in accordance with the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples, but it had even undertaken some measures contrary to those provided for in the Declaration.

49. His delegation considered that the development of those Territories was still very slow, because of the interests which the administering Power hoped to preserve there as long as possible. As early as 1964, the Conference of Non-Aligned Countries, held in Cairo, had condemned the intentions expressed by imperialist Powers of establishing military bases in the Indian Ocean, holding that such bases would constitute a threat to the new Afro-Asian countries and impede the process of decolonization. The course of events had shown that the Conference had been right, for in November 1965 the United Kingdom had decided to establish the new British Indian Ocean Territory as the site of defence bases for the United Kingdom and the United States of America. In spite of the resignation of three Ministers of the Mauritius Social Democratic Party and the protests raised in Mauritius following that decision, the administering Power had not changed its position on the establishment of those bases, as was evident from the statement of the United Kingdom Defence Secretary, contained in the Secretariat working paper (A/AC.109/L.279, para. 34).

50. As it had already stated, his delegation held that the United Kingdom was not entitled to dismember the Territory of Mauritius for the purpose of military installations. It considered that the Sub-Committee was duty bound to recommend to the Special Committee that the peoples of the Territories in question should accede without delay to independence, in accordance with their freely expressed wishes and with the provisions of the Declaration contained in resolution 1514 (XV). It further thought that the problem of the establishment of military bases through the dismemberment of Mauritius should be given particular attention, in accordance with the provisions of resolution 2066 (XX).

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51. The representative of Denmark expressed his satisfaction that the Territory of Mauritius was to accede to independence the following year, in accordance with the agreement established at the Constitutional Conference in London in September 1965. Following negotiations between the administering Power and the island's three main political parties, the electoral provisions made in the original draft Constitution, which had aroused some criticism by the parties, had been modified and subsequently approved by all concerned. In that connexion, the electoral system drawn up for Mauritius might seem at first to be unduly elaborate, but a similar and equally elaborate system had been functioning in Denmark for a long time, to everyone's satisfaction. Experience had shown that the system fulfulled its purpose perfectly, which was to assure fair and equal representation of all voters. The elections which were to take place on Mauritius would ensure the establishment of an autonomous Government and subsequently, after an interval of six months, accession to independence. The economic and social situation in the Territory seemed satisfactory, thanks to the determined efforts made by the authorities and the people to overcome the severe difficulties due to the losses caused a few years ago by two cyclones. Moreover, the authorities had been trying for some years to diversify the island's economy, which, at present, depended largely on its sugar production. The Danish Government thought, therefore, that the Territory of Mauritius could advance confidently towards independence, and it was looking forward to maintaining the best of relations with the new State.

52. With regard to Seychelles and St. Helena, his delegation considered, as it had often stated, that it was for the people of those Territories, and for them alone, to determine their constitutional future. The size, population and economy of those Territories might justify the adoption of special constitutional arrangements, which should not be ruled out, provided they met with the support of the population.

53. His delegation thought that in its report to the Special Committee, the Sub-Committee should express its satisfaction with the considerable progress made by the Territory of Mauritius on the path towards independence and should express the hope that the forthcoming elections would be another proof of the population's desire to accede to independence. With regard to Seychelles and St. Helena, the Sub-Committee's recommendations should take account of the special circumstances

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prevailing in those Territories and should, therefore, not contain any proposals which might be incompatible with those circumstances and perhaps with the wishes of the population concerned.

B. Conclusions

54. The study of the situation in Mauritius, Seychelles and St. Helena shows that the administering Power has so far not only failed to implement the provisions of resolution 1514 (XV) in these Territories, but has also violated the territorial integrity of two of them by creating a new territory, the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, in direct contravention to resolution 2066 (XX) of the General Assembly.

55. The Sub-Committee notes with regret the slow pace of political development in the Territories, particularly in Seychelles and St. Helena. This has delayed the transfer of powers to democratically elected representatives of the people and the attainment of independence. Key positions of responsibility in the administration of the Territories seem to be still in the hands of United Kingdom personnel.

56. The Sub-Committee notes with deep concern the reports pointing to the activation of a plan purporting among other things to establish military bases in Mauritius and Seychelles as well as an air base on Ascension Island, a plan which is causing anxiety in the Territories concerned and among people in Africa and Asia and which runs contrary to the provisions of resolution 2105 (XX) of the General Assembly.

57. The electoral arrangements devised for Mauritius apart from being complex in themselves seem to have been the subject of great controversy between the various groups and political parties. Regarding the Seychelles, the Sub-Committee regrets that people are still deprived of the right of universal suffrage.

58. The economy of the Territories, particularly Mauritius, is characterized by diminishing revenue, increasing unemployment and consequently a declining standard of living. Foreign companies continue to exploit the Territories without regard to the true interests of the inhabitants.

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C. Recommendations

59. The Sub-Committee recommends that the Special Committee reaffirm the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination and independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples. The administering Power should therefore be urged again to allow the populations of the three Territories to exercise without delay their right of self-determination.

60. Any constitutional changes should be left to the people of the Territories themselves, who alone have the right to decide on the form of government they wish to adopt.

61. Free elections on the basis of universal adult suffrage should be conducted in the Territories as soon as possible. The elections should lead to the establishment of representative organs which would choose responsible governments to which all powers could be transferred.

62. The administering Power should be called upon to respect the territorial integrity of Mauritius and Seychelles and to insure that they would not be used for military purposes.

63. In fulfilment of the provisions of paragraph 12 of General Assembly resolution 2105 (XX), the administering Power should be called upon to refrain from establishing military bases in the Territories.

64. The Special Committee should recommend to the General Assembly to state categorically that any bilateral agreements concluded between the administering Power and other Powers affecting the sovereignty and fundamental rights of the Territories should not be recognized as valid.

65. The administering Power should be called upon to preserve the right of the indigenous inhabitants to dispose of all the wealth and natural resources of their countries. It should be urged to undertake effective measures in order to diversify the economy of the Territories.

D. Adoption of report

66. This report was adopted by the Sub-Committee at its 32nd meeting on 19 September 1966. The representative of Denmark stated that certain parts of the conclusions and the recommendations of the report did not conform with his delegation's opinion as expressed in the Sub-Committee's meeting on 12 September 1966 (see paragraphs 51-53 above). His delegation therefore could not support all the conclusions and recommendations of the report.

Annex 56

United Nations General Assembly, Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/6700/Add.9, Chapter X, 1967

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REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

(covering its work during 1967)

Rapporteur: Mr. Mohsen S. ESFANDIARY (Iran)

CHAPTER X

GIBRALTAR

CONTENTS

* This document contains chapter X of the Special Committee's report to the General Assembly. The general introductory chapter will be issued subsequently under the symbol A/6700 (Part I). Other chapters of the report are being reproduced as addenda.

CONTENTS (continued)

ANNEXES:

I. ACTION PREVIOUSLY TAKEN BY THE SPECIAL COMMITTEE AND THE GENERAL ASSEMBLY

1. The Special Committee began its consideration of Gibraltar in 1963 and 1964. On 16 October 1964, the Committee adopted a consensus in which it noted that "there was a disagreement, or even a dispute between the United Kingdom of Great Britain and Northern Ireland and Spain regarding the status and situation of the Territory of Gibraltar" and invited the above-mentioned Powers to begin talks without delay, in accordance with the principles of the United Nations Charter, in order to reach a negotiated solution in conformity with the provisions of General Assembly resolution 1514 (XV) giving due account to the opinions expressed by the members of the Committee and bearing in mind the interests of the people of the Territory. The United Kingdom and Spain were further requested to inform the Special Committee and the General Assembly of the outcome of their negotiations.[1/] The texts of notes exchanged between the two Governments were reproduced as appendices to the report of the Special Committee to the General Assembly at its twentieth session.[2/]

2. In resolution 2070 (XX), adopted on 16 December 1965, the General Assembly invited the Governments of Spain and of the United Kingdom to begin without delay the talks envisaged under the terms of the above-mentioned consensus and to inform the Special Committee and the General Assembly at its twenty-first session of the outcome of their negotiations.

3. The Special Committee again considered the question of Gibraltar at meetings held during November 1966 at which time it had available the texts of further correspondence between the two Governments.[3/] On 17 November 1966, it adopted a resolution whereby, taking into account the willingness of the administering Power and the Government of Spain to continue the negotiations, it: (a) called on the two parties to refrain from any acts which would hamper the success of the negotiations; (b) regretted the delay in the implementation of General Assembly

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1/ Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 8 (part I), (A/5800/Rev.1), chapter X, para. 209.

2/ Ibid., Twentieth Session, Annexes, addendum to agenda item 23, (A/6000/Rev.1), chapter XI, appendices.

3/ A/6242, A/6277 and A/6278.

resolution 1514 (XV) with respect to the Territory; (c) called on the two parties to continue their negotiations in a constructive way and to report to the Special Committee as soon as possible, and in any case before the twenty-second session of the General Assembly; and (d) requested the Secretary-General to assist in the implementation of the resolution.[4/]

4. At its twenty-first session, the General Assembly adopted resolution 2231 (XXI) of 20 December 1966, the operative paragraphs of which read as follows:

> "1. Regrets the delay in the process of decolonization and in the implementation of General Assembly resolution 1514 (XV) with regard to Gibraltar;
>
> "2. Calls upon the two parties to continue their negotiations, taking into account the interests of the people of the Territory, and asks the administering Power to expedite, without any hindrance and in consultation with the Government of Spain, the decolonization of Gibraltar, and to report to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples as soon as possible, and in any case before the twenty-second session of the General Assembly;
>
> "3. Requests the Secretary-General to assist in the implementation of the present resolution."

II. INFORMATION ON THE TERRITORY[5/]

5. Information on the Territory is contained in the reports of the Special Committee to the General Assembly at its eighteenth, nineteenth, twentieth and twenty-first sessions. Supplementary information is set out below.

4/ A/6300/Add.8, chapter XI, para. 66.

5/ This section was originally reproduced in document A/AC.109/L.419. This information has been derived from published sources and from the information transmitted to the Secretary-General by the United Kingdom of Great Britain and Northern Ireland under Article 73 e of the Charter, on 1 September 1966, for the year ending 31 December 1965.

Constitutional developments

6. There were no constitutional changes effected during the period under review.

Negotiations between the United Kingdom and Spain

7. An account of the state of the negotiations between the United Kingdom and Spain appears in the report of the Secretary-General of 17 July 1967 which is annexed to the present chapter.

Economic conditions

8. Gibraltar, which has no agriculture or other primary resources, is largely dependent on tourism, re-exports and the work provided by the dockyard, the Departments of the Armed Services, the Government and the City Council.

9. In particular, efforts are being made to develop the tourist industry. They include the expansion of hotel and restaurant facilities, the promotion of various types of business and other conferences and festivals, the construction of an aerial ropeway to the top of the Rock, etc.

10. The main sources of government revenue are customs and excise. Revenue for the year 1965 totalled £1,848,407 and expenditure amounted to £2,536,800 which included expenditure met out of the Improvement and Development Fund amounting to £518,618. The largest item of expenditure in 1965 was social services (including rehousing and town planning), amounting to £1,294,800.

11. Following a visit of the Chief Minister, Sir Joshua Hassan and the Minister without Portfolio, Mr. Peter Isola to London in July 1965, the United Kingdom Government announced that it was making available £1 million in Colonial Development and Welfare grants for development in Gibraltar over the next three years and also a further £200,000 in Exchequer loans should they be required. In addition, £100,000 would be made available as a special grant-in-aid. This was not actually brought to account until early 1966. The total of £1,100,000 in grants and £200,000 in loans during the years April 1965-March 1968 compares with a Colonial Development and Welfare allocation of £400,000 previously made available for the three years ending 31 March 1966. It was announced in November 1966 that the United Kingdom Government was allocating a further £600,000 in addition to the

£1 million previously allocated in Colonial Development and Welfare grants for an expanded development programme. The United Kingdom Government had also agreed, subject to parliamentary approval, to provide a special grant-in-aid of £100,000 to Gibraltar's budget in 1967.

Social conditions

12. It is estimated that approximately two thirds of the labour force consists of alien non-domiciled workers, the majority of whom live in neighbouring Spanish territory and who enter daily by road from La Linea or by sea from Algeciras under frontier documents issued and controlled by the authorities on both sides of the frontier. Since 1964, however, the flow of workers from neighbouring Spanish territory has tended to diminish while the influx of other non-Spanish labour has tended to increase.

13. In 1965 there were eight doctors practising under government and local authority services and eleven private doctors in Gibraltar. Recurrent expenditure on public health in 1965 was £274,875 by the Government and £33,691 by the local authority. Capital expenditure was £7,612 and £1,820 respectively.

Educational conditions

14. Education in Gibraltar is compulsory and free in government schools for children between five and fifteen years of age. As at the end of 1965, primary education was provided in twelve government schools and three private schools. In addition, there were six government secondary schools and two technical schools, the latter being the Gibraltar and Dockyard Technical College for boys and the Commercial School for girls. There is no higher education in Gibraltar but Gibraltarians with the necessary qualifications are granted scholarships and grants for further study overseas, mostly in the United Kingdom.

15. Total enrolment in schools as at the end of 1965 was 5,125 children out of a total population of 25,270 civilian residents. Of this number, 3,315 were enrolled in primary schools, 1,686 in secondary schools and 124 in the technical schools.

16. Recurrent government expenditure on education in 1965 was £208,663 while capital expenditure relating to buildings amounted to approximately £20,000 with new works started but not completed estimated at about £90,000.

III. CONSIDERATION BY THE SPECIAL COMMITTEE

Introduction

17. The Special Committee considered Gibraltar at its 543rd to 550th meetings held at Headquarters between 22 August and 1 September 1967. It had before it a report by the Secretary-General concerning the implementation of General Assembly resolution 2231 (XXI) of 20 December 1966 (see annex I).

18. In a letter dated 22 August 1967 (A/AC.109/258), the Deputy Permanent Representative of Spain to the United Nations requested that his delegation be allowed to participate in meetings of the Special Committee at which Gibraltar would be discussed. The Committee decided, without objection, to accede to that request.

A. Written petitions

19. The Special Committee had before it the following written petitions concerning Gibraltar:

Petitioner	Document Number
Mr. Julian Palomo Jiménez	A/AC.109/PET.645
Sir Joshua Hassan, Chief Minister of Gibraltar, Mr. P.J. Isola, Deputy Chief Minister, and others	A/AC.109/PET.704
Mr. Daniel Fernandez	A/AC.109/PET.705
Mr. Alfredo Bentino	A/AC.109/PET.706
171 petitions concerning Gibraltar	A/AC.109/PET.714-883
Mr. Carlos Manuel Larrea, President, and eighteen members of the Instituto Ecuatoriano de Cultura Hispanica	A/AC.109/PET.884
Mr. Andrés Townsend Ezcurra, Secretary-General of the Latin American Parliament	A/AC.109/PET.900

B. General statements

20. The representative of the United Kingdom said that most of the developments concerning the question of Gibraltar which had occurred since the adoption of General Assembly resolution 2231 (XXI) on 20 December 1966 were fully covered in the Secretary-General's report (see annex I). It might be useful, however, to recall the salient features of the current situation and to outline the main developments which had led up to it. Three main conclusions could be drawn - the first negative and the other two positive. The first conclusion was that, to his

delegation's regret, the continued negotiations between the United Kingdom and Spain called for in General Assembly resolution 2231 (XXI) had not taken place. Secondly, by its decision to hold a referendum in Gibraltar, the United Kingdom Government had made an important contribution towards the implementation of resolution 2231 (XXI) and other relevant resolutions of the General Assembly and the Special Committee. Thirdly, the result of the referendum would be an important new factor in deciding on the appropriate steps to be taken thereafter. His statement would be in the nature of an interim account, and a fuller report to the Special Committee, as required under General Assembly resolution 2231 (XXI), would be made when the result of the referendum was known. The Special Committee might, therefore, wish to suspend any substantive judgement on the longer-term aspects of the Gibraltar question until then.

21. A few days before the adoption of General Assembly resolution 2231 (XXI), the Spanish Government had rejected a United Kingdom proposal that the various legal issues which had emerged during the negotiations should be referred to the International Court of Justice and had reverted to its earlier proposal that Gibraltar should be incorporated in Spain under a bilateral convention and "statute". Following the adoption of resolution 2231 (XXI), the United Kingdom Government had taken the initiative in proposing a further round of talks to discuss possible methods of decolonizing Gibraltar, and the Spanish Government had agreed that those talks should take place on or about 18 April 1967. Six days before the talks had been due to begin, however, the Spanish Government, without any prior consultation, had published an order establishing in the immediate vicinity of Gibraltar a prohibited air zone in which all flying was banned, thus hampering access to Gibraltar. The timing of the announcement was clearly not accidental; indeed, similar restrictions on access to Gibraltar had been introduced on two earlier occasions - first in October 1964, the day after the Special Committee had adopted its consensus recommending negotiations between the United Kingdom and Spain, and again in October 1966, five days before a further round of bilateral talks between the United Kingdom and Spain had been due to begin. It was with such acts in mind that the Special Committee, in its resolution of 17 November 1966 (A/6300/Add.8, chap. XI, para. 66), had called upon the two parties to refrain from any acts which would hamper the success of negotiations,

and that the General Assembly had included in its resolution 2231 (XXI) the final preambular paragraph regretting the occurrence of certain acts which had prejudiced the smooth progress of negotiations. Since the declaration of the prohibited air zone in April 1967 had clearly and deliberately introduced a new element into the situation in Gibraltar and had been designed to prejudice the interests of the people of Gibraltar, the United Kingdom Government had considered it a matter of priority to establish the practical implications of that announcement before proceeding with the consultations, and it had therefore postponed the talks. The effects of the prohibited air zone on civil aircraft had already been discussed in the Council of the International Civil Aviation Organization (ICAO) and the matter would be raised in that organization by the United Kingdom as a dispute within the terms of article 84 of the Chicago Convention. In the course of discussions held at Madrid between 5 and 8 June 1967 at the suggestion of the United Kingdom Government, the Spanish representatives had declined to discuss the question of the prohibited air zone without prior acknowledgement by the United Kingdom Government of Spanish sovereignty over the territory on which Gibraltar airfield was situated. It was clear, therefore, that the prohibited air zone would in fact interfere with air navigation at Gibraltar. The Spanish Government's repeated allegations, during the past year, that United Kingdom aircraft had violated Spanish air space had all been fully investigated by the United Kingdom Government, and in only three instances had the allegations proved justified. Gibraltar airfield had been used by British aircraft for many years, yet, significantly, it was only in the past year that such allegations had been made so repeatedly and with such studied publicity.

22. Those were the reasons why the negotiations called for in General Assembly resolution 2231 (XXI) had not taken place. His Government's position on the issue was clear and consistent; it favoured talks, it deplored the obstruction of talks by the Spanish Government, and it regretted the imposition by the latter of obviously unacceptable pre-conditions for the holding of further talks on political matters, or even on the prohibited air zone. After the referendum, there would still be a wide range of subjects for fruitful discussion between the two Governments.

23. The principal element in the present situation was the United Kingdom's announcement that a referendum would be held in Gibraltar. The terms of the referendum had been communicated to the Secretary-General and were reproduced in hi report (see annex I, paras. 15 and 16). There were two choices offered to the people of Gibraltar, namely, to pass under Spanish sovereignty in accordance with the terms proposed by the Spanish Government on 18 May 1966, or voluntarily to retain their link with Britain, with democratic local institutions and with Britain retaining its present responsibilities. The announcement of the referendum had bee immediately welcomed by the elected representatives of the people of Gibraltar and by public opinion generally in the Territory. It was most important that the people of Gibraltar should be asked to say where their own interests lay, since those interests, according to Chapter XI of the Charter, were paramount and since General Assembly resolution 2231 (XXI) had called upon the United Kingdom and Spain to take them into account. The United Kingdom Government had offered the Spanish Government facilities to explain its proposals to the people of Gibraltar and try to convince them that the arrangements it proposed would be in their best interests and had also expressed its readiness to welcome a nominee of the Spanish Government to observe the referendum, but so far the Spanish Government had declined both invitations as unacceptable and had stated its disagreement with the referendum and its unwillingness to concede any validity to its results. The Spanish Government had likewise rejected a further offer by the United Kingdom to consider any views it might wish to put forward on the formulation of the first alternative in the referendum. The United Kingdom still hoped, however, that the Spanish Government would decide to accept the offers, but even if it did so the position of the United Kingdom Government would remain one of complete impartiality as between the two alternatives presented in the referendum, in order to allow the people of Gibraltar a completely free choice.

24. The second alternative offered in the referendum was obviously a limited choice. Under the Treaty of Utrecht, Gibraltar could not be alienated from the British Crown without first being offered to Spain. Thus, the practical choices open to the people of Gibraltar were restricted. Similarly, the area of British responsibilities referred to in the second alternative reflected the United Kingdom Government's concern for legitimate Spanish interests in the immediate

vicinity of Gibraltar. It had been made clear, however, that if the people chose the second alternative the United Kingdom Government would be ready to discuss with their representatives any appropriate constitutional changes which might be desired.

25. The referendum would be held on 10 September, and the entitlement to vote would be restricted to persons of Gibraltarian origin resident in the Territory who were over the age of twenty-one years. Out of a total resident population of some 25,000, therefore, about 12,000 persons would be registered as eligible to vote in the referendum, and the United Kingdom Government hoped that a high proportion would in fact do so.

26. As for the purposes of the referendum, the United Kingdom Government regarded it as an important, though not necessarily a final, stage in the process of decolonization. Moreover, it did not represent a final and irrevocable option on the part of the people of Gibraltar regarding the issue of incorporation in Spain; for even if a majority elected to retain the link with the United Kingdom, the people of Gibraltar would still retain the right to express by free and democratic choice their desire to join Spain. That undertaking went beyond the requirements of the Treaty of Utrecht. His delegation could only regret that the Spanish Government had not so far welcomed or recognized that important new step by the United Kingdom Government.

27. The referendum could be considered a significant step forward in the implementation of General Assembly resolution 2231 (XXI) paragraph 2; for it sought to establish, by popular vote, whether the Spanish proposals of 18 May 1966 were in accordance with the interests of the people of Gibraltar themselves. That question could not be determined by any outside body without reference to those whose future was at stake. The United Kingdom Government believed that, once that point had been clarified, further progress could be made towards the realistic achievement of the objectives of the General Assembly resolution, and it was fully prepared to hold further talks with the Spanish Government on the subject of Gibraltar.

28. Because the referendum was such an important step towards decolonization, the United Kingdom Government was most anxious that it should be conducted in conditions of absolute impartiality. To that end, it would welcome the presence of a Spanish observer, and he was glad to say that the Governments of certain Commonwealth countries and certain States Members of the United Nations had agreed to nominate

independent observers. The United Kingdom had also informed the Secretary-General that it would welcome the presence of any observer whom he might wish to send to Gibraltar for the referendum. That seemed especially appropriate in the light of Assembly resolution 2231 (XXI), and particularly of operative paragraph 3.

29. One reason advanced by the Spanish Government for its unwillingness to accept the referendum was that it would cause the reversion clause of the Treaty of Utrecht to come into operation, although in fact the holding of the referendum could not entail any interruption of British sovereignty over Gibraltar or any alienation of Gibraltar from the British Crown. However, the main criticisms of the Spanish Government seemed to centre on the unfounded assertion that the referendum violated resolution 2231 (XXI) and earlier resolutions of the General Assembly and of the Special Committee by implying that the people of Gibraltar were to say whether General Assembly resolution 1514 (XV) did or did not apply to Gibraltar. It was clear from the terms of resolution 2231 (XXI) that almost all Member States agreed that Gibraltar was a Territory within the scope of resolution 1514 (XV). The referendum would simply ask the people of Gibraltar to state whether or not it would be in their interests to be incorporated in Spain, on the terms offered by the Spanish Government. The clarification of their wishes on that point was certainly a step towards decolonization and was entirely consistent with General Assembly resolutions 2231 (XXI) and 1514 (XV).

30. The Spanish Government's concern with resolution 1514 (XV) seemed to rest exclusively on paragraph 6 of the Declaration. However, it was clear that, in framing paragraph 6, its authors had been essentially concerned not with the risks of dismemberment in sovereign States but with the possibility of dismemberment of existing Non-Self-Governing Territories or of such countries as the Democratic Republic of the Congo which, in December 1960, had barely emerged from colonial status. If paragraph 6 of the Declaration had any relevance to Gibraltar, it could only apply to the attempts of the Spanish Government itself to disrupt the territorial integrity and unity of Gibraltar by laying a claim to the southern part of the isthmus, which had been a part of Gibraltar for more than 100 years.

31. The United Kingdom Government had no doubt as to its legal sovereignty over Gibraltar, and indeed had offered to refer the Spanish Government's claim to the International Court of Justice and abide by its ruling.

32. Even if paragraph 6 of the Declaration could be interpreted as referring to the national unity of mature sovereign States, the Spanish case depended entirely on the thesis that Gibraltar was not a Non-Self-Governing Territory but a part of Spain. That view had certainly not been endorsed by the United Nations. On the contrary, the United Kingdom Government, year after year, had submitted information on Gibraltar under Article 73 e of the Charter, and the status of Gibraltar as a Non-Self-Governing Territory had been accepted in every competent organ of the United Nations.

33. If the Spanish Government really believed that Gibraltar was under Spanish sovereignty, Spain should accept the offer to resolve the question in the highest judicial organ of the United Nations. If, on the other hand, the argument was that Gibraltar was geographically a natural part of Spain, then by the same token it must be accepted that Lesotho and Swaziland were natural parts of South Africa, or Ifni a natural part of Morocco.

34. Moreover, the United Nations had not accepted the proposition that in the case of Gibraltar decolonization could only be brought about by integration with Spain. It was true that the Spanish Government had a standing in matters affecting Gibraltar, and that standing was recognized in the resolutions and was accepted by the United Kingdom Government.

35. While the Treaty of Utrecht limited the possibilities for decolonization through the normal formula of independence, there were other avenues of decolonization consistent with General Assembly resolution 1514 (XV). Integration with Spain would constitute decolonization only if it took place demonstrably in accordance with the wishes of the people of the Territory. To transfer Gibraltar to Spain against their wishes would not be decolonization, but a flagrant breach of all the principles of the Charter and of General Assembly resolutions.

36. There were other features of resolution 1514 (XV), besides paragraph 6 of the Declaration, that might be recalled. It was stated that all peoples had the right to self-determination and that the subjection of peoples to alien subjugation was a denial of fundamental human rights, and the importance of the freely expressed will of the peoples of Non-Self-Governing Territories was emphasized. It was against that background that one should view, first, the referendum, which allowed the people of Gibraltar to express their views as to where their interests lay in regard to one possible road to decolonization and, second, the Spanish proposition that such matters should be negotiated by the United Kingdom and Spanish Governments.

37. In implementation of General Assembly resolution 2231 (XXI), his delegation had endeavoured to present as full an account as possible of developments regarding Gibraltar on an interim basis. Its statement could not be considered a final report under the terms of the resolution, since that must await the outcome of the referendum. As for expediting the decolonization of Gibraltar, enough had been said to demonstrate that the referendum represented definite progress in that direction. The Spanish Government had been given an opportunity to explain its proposals to the Gibraltarians and had been invited to nominate an observer to the referendum. Moreover, the people of Gibraltar had been given a continuing option to modify their status by joining Spain. The United Kingdom Government had thus given full proof of its intention to take account of the interests of the people of the Territory. It would also be recalled that it had taken the initiative in arranging for a resumption of negotiations in April 1967. It could only regret that continued negotiations had been obstructed by the actions of others. Furthermore, whatever the results of the referendum, the United Kingdom Government still believed that there was a whole range of issues concerning Gibraltar that could be explored in direct talks with the Spanish Government within the framework of General Assembly resolution 2231 (XXI). It would be ready to take part in such negotiations, once the referendum had been held.

38. The representative of Spain said that General Assembly resolution 2231 (XXI), taken in conjunction with resolution 2070 (XX) and the Special Committee's consensus of 16 October 1964, not only made it quite clear that Gibraltar should be decolonized but also specified the manner in which the process should be conducted.

39. The colonial situation in Gibraltar called for the application of General Assembly resolution 1514 (XV), as the United Nations had requested. That resolution contained a Declaration consisting of seven paragraphs, the first of which stated that the subjection of peoples to alien subjugation was contrary to the United Nations Charter. However, the United Kingdom and the petitioners appearing before the Committee had said that the inhabitants of Gibraltar were not subjugated by the United Kingdom. The second paragraph set forth the principle that all peoples had the right to self-determination; however, neither the Special Committee nor the General Assembly had specified that that principle should apply to the civilian inhabitants of Gibraltar. Indeed, the 1964 consensus and General Assembly

resolution 2231 (XXI) merely stated that Spain and the United Kingdom should bear the interests of the inhabitants in mind. Paragraphs 3, 4 and 5 set forth principles for guaranteeing self-determination in cases to which paragraphs 1 and 2 applied. Consequently, only paragraph 6, supplemented by paragraph 7, offered a solution for the situation in Gibraltar. In connexion with paragraph 6, he would point out that the interpretation which the United Kingdom representative had placed on the implications of the scope given to it by the Assembly was not in keeping with the facts, as the records of the debates would suffice to show.

40. Continued British presence on a portion of Spanish soil was tantamount to the dismemberment of Spain's national unity and territorial integrity. As long as such dismemberment persisted, the colonial situation in Gibraltar would also persist, whatever formula was used to disguise it.

41. Although the United Nations did not consider the civilian inhabitants of Gibraltar to have the necessary qualifications for self-determination, it had laid down one important condition for the return of that Territory to Spain, namely, that the interests of the inhabitants should be respected by both the United Kingdom and Spain. That decision was quite in keeping with the statement contained in the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/6230, para. 502).

42. From the very outset, the Spanish Government had offered to respect the interests of the people of Gibraltar and had made a number of suggestions to the United Kingdom as to how those interests might be safeguarded. The United Kingdom Government had not stated what the interests of those inhabitants would be until 14 June 1967, when it had indicated that it considered one of the interests of the inhabitants of Gibraltar to be the right to take a decision regarding sovereignty over a Territory which it occupied. That decision by the United Kingdom had prompted Spain to request an opportunity to make a statement in the Special Committee.

43. When the negotiations recommended in General Assembly resolution 2070 (XX) had opened in London on 18 May 1966, his Government had proposed to the United Kingdom that two agreements should be concluded, one governing the interests of the inhabitants of Gibraltar and the other safeguarding the United Kingdom's interests. On the signing of those agreements, General Assembly resolution 1514 (XV) would have

become applicable, ending the dismemberment of his country's national unity and territorial integrity. The five meetings which had ensued had been negotiations in name only, and all the United Kingdom had done was to create obstacles to the process of decolonization, invoking legal and historical arguments and raising marginal issues. It had adduced new colonial rights over Spanish territory even more extensive than those conferred by the anachronistic Treaty of Utrecht, and it had finally proposed that the International Court of Justice should examine its colonial rights over the Rock before the United Nations resolutions were implemented During the Special Committee's consideration of the situation in Gibraltar in November 1966, he had drawn attention to the United Kingdom's reluctance to negotiate and to the fact that it had gone so far as to claim sovereignty over a part of Spanish territory adjacent to the Rock, thereby committing a new act of aggression against Spain's territorial integrity.

44. The United Kingdom delegation had thereupon attempted to justify its proposal to refer the matter to the International Court of Justice by presenting a long list of accusations against Spain. Those accusations had already been advanced in 1965 as a pretext for refusing to negotiate, and again in 1966 to mask the United Kingdom's unwillingness to negotiate. It had come as no surprise that they had again been put forward during the present debate as an excuse for the United Kingdom's decision to break off the London negotiations on 13 April 1967.

45. His Government interpreted the Special Committee's resolution of 17 November 1966 as a clear indication that the United Nations felt that the decolonization of Gibraltar should proceed through negotiations between Spain and the United Kingdom, and not through recourse to the International Court of Justice. His Government had therefore explained to the United Kingdom why the question could not be submitted to the International Court and had proposed the immediate opening of negotiations for the drafting of a statute to protect the interests of the inhabitants of Gibraltar. The statute was to have become a formal agreement between the two countries, duly registered with the United Nations.

46. General Assembly resolution 2231 (XXI) had requested the United Kingdom to refrain from hindering the decolonization of Gibraltar, which should be undertaken "in consultation with the Government of Spain" and by means of negotiations "taking into account the interests of the people of the Territory". The provisions of the

resolution were identical to those of the Spanish Government's proposal to the United Kingdom six days earlier. By that stage, it had been clear that General Assembly resolution 1514 (XV) provided the only means of solving the question of Gibraltar, bearing in mind the interests of its inhabitants. The United Kingdom had never told Spain what those interests were and had not allowed the Gibraltarians themselves to do so.

47. In 1963 and 1964, Mr. Hassan and Mr. Isola, petitioners from Gibraltar, had requested the Special Committee to safeguard the inhabitants' right to self-determination; however, that right was to be exercised exclusively in order to perpetuate the colonial situation in the Territory which, as the petitioners had admitted, did not affect them. It was not until 17 December 1966 that Mr. Hassan had told the Fourth Committee what rights the inhabitants of Gibraltar wished to see protected. That had been the first indirect information regarding those rights which his Government had received. Mr. Hassan's statement (A/C.4/SR.1679) had confirmed the existence of two types of interests in Gibraltar - those affecting the Gibraltarians themselves, and those of the United Kingdom, which were best described as limited sovereignty over a military fortress on Spanish soil. On 18 May and 13 December 1966, his Government had proposed separate solutions to the problem of those different interests. If the United Kingdom had been ready to comply with General Assembly resolution 2231 (XXI), it would have been easier to solve the question of the purely Gibraltarian interests. At no time, however, had the United Kingdom given any indication that it was ready to open a civilized dialogue with Spain, as requested in the resolution. United Kingdom aircraft had continued to violate Spanish air space, and Spanish protests had been ignored. Furthermore, on 5 January 1967, the United Kingdom had informed his Government that it had acquired the right to avail itself of Spanish air space in the area of the Rock by virtue of its construction of a military airfield adjacent to Gibraltar. The United Kingdom had already attempted to colonize another part of Spanish territory on 12 July 1966, and its attempt to establish so-called rights in Spanish air space, on behalf of military aircraft operating from the Gibraltar airfield, had come sixteen days after the adoption of resolution 2231 (XXI).

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48. The United Kingdom's claim and its endeavours to encroach on Spanish air space had made it more urgent than ever that Spain should protect its air space against military use by foreign countries. His Government had previously requested the establishment of a prohibited zone for air navigation in Spanish military air space around the Straits of Gibraltar. The United Kingdom's insistence on maintaining its base in Gibraltar demonstrated the strategic importance of the region. His Government had therefore approved a ministerial order establishing the prohibited air zone in Algeciras on 11 April 1967. The United Kingdom had used the existence of the prohibited zone as a pretext for disrupting the London negotiations, and the United Kingdom representative had attempted to show that the prohibited zone was a further example of Spanish hostility which was allegedly preventing negotiations. Such tactics were merely a repetition of those used in 1965 and 1966, when the United Kingdom had unsuccessfully attempted to persuade ICAO to condemn the prohibited zone as illegal. By submitting the problem of a prohibited zone to a technical organization concerned exclusively with civil aviation, the United Kingdom had tried to disguise the exclusively military nature of the airfield, which was registered as a military airfield with ICAO. Moreover, the permission of the Royal Air Force was necessary for overflights of the area.

49. The United Kingdom had subsequently rejected a Spanish proposal for the joint modernization of the Gibraltar airfield - despite the fact that it was situated on territory usurped from Spain. By so doing, the United Kingdom had sacrified the civilian traffic through the airfield, which would have brought many advantages to all parties concerned.

50. The Middle East conflict had given clear proof of the need for Spain to establish the prohibited zone. The policies of the United Kingdom and Spain in regard to that conflict had been different, and if it had spread the possibility of the military involvement of Gibraltar could not have been overlooked. The bombing of Gibraltar during the Second World War had caused many victims in the neighbouring Spanish city of La Linea. So long as a military base outside its control existed in Gibraltar, the Spanish Government must emphasize that it did not agree with the use made of that base.

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51. It was common knowledge that the United Kingdom had interrupted the negotiations for the decolonization of Gibraltar and had decided to hold a referendum in the Territory, without previous consultations with Spain as required in General Assembly resolution 2231 (XXI). The referendum was to be held in September 1967, and the United Kingdom had requested Spain and the United Nations to send observers. The questions to be put to the Gibraltarians amounted simply to asking them whether or not they wished to continue their present colonial status. The decision to hold a referendum violated not only the colonial Treaty of Utrecht but also the United Nations resolutions. It had been taken without consulting the Spanish Government, as operative paragraph 2 of resolution 2231 (XXI) required. The Spanish proposal that both countries should consult the Gibraltarians regarding the interests they wished to see safeguarded had met with no reply until 31 July 1967, although a Foreign Office spokesman had stated on 5 July 1967 that the United Kingdom would proceed with the referendum as planned. On 8 July the United Kingdom had indicated that it would not reply to the Spanish proposal; on 31 July, nevertheless, the United Kingdom Government had replied and had attempted to prove that the referendum was not a violation of General Assembly resolutions 2070 (XX) and 2231 (XXI). The reply was the most curious document yet received by Spain in connexion with the decolonization of Gibraltar. It stated that Gibraltar could not be considered part of Spain until the International Court of Justice so decided and that operative paragraph 6 of the Declaration did not, therefore, apply to the colonial situation in Gibraltar. It was clear, however, that the United Kingdom had taken a step greatly affecting the decolonization of Gibraltar and directed more against Spain than towards helping the Gibraltarians.

52. The referendum was tantamount to a defiance of the United Nations, whose decisions were not only ignored by the United Kingdom but were also subjected to the decisions of the inhabitants of Gibraltar after the referendum.

53. In April 1964, the United Kingdom had granted the British inhabitants a constitution setting up a "government" by promoting the Mayor of Gibraltar to the rank of Chief Minister. His delegation had denounced that stratagem in documents submitted to the Secretary-General. The United Kingdom had thus attempted to create the impression that the principle of self-determination was being applied

to Gibraltar, in the hope that the Special Committee would not renew its examination of the question. Although the adoption of resolution 2070 (XX) had marked the failure of that attempt, the referendum which the United Kingdom was now organizing was nothing more than the culmination of the 1964 manoeuvre. The United Kingdom Government had published an Order in Council on 28 June in connexion with the referendum, in which it was stated that the Order in Council was to be construed as one with the Constitution set out in the Gibraltar Constitution Order of 1964. That was an admission that the referendum was a part of the Constitution of 1964, which had been designed to present the Special Committee with a fait accompli. His delegation was sure that the Committee wuuld not be deceived by such shabby tactics. The so-called United Kingdom policy of decolonization in Gibraltar was merely a series of manoeuvres designed solely to guarantee the permanence of the United Kingdom's presence on the Rock. The United Kingdom was attempting to obtain the United Nations approval for its policies; when it failed to do so, it defied the Organization's decisions.

54. The United Kingdom was linking its own interests in the referendum with the interests of the inhabitants of the Rock, by forcing the latter to defend the United Kingdom's military interests at the entrance to the Mediterranean in order to defend a particular way of life which they wished to preserve.

55. Petitioners from Gibraltar had expressed a desire that the military base in Gibraltar should continue, and the United Kingdom was now attempting to have the perpetuation of that base requested by the majority of its subjects on the Rock. It was doing so because it had two specific political objectives in organizing the referendum: first, to defend its military base, and, secondly, to convert its dispute with Spain into a dispute between Spain and the inhabitants of Gibraltar. In an attempt to defend its base, and believing that Spain would agree to permanent United Kingdom sovereignty, the United Kingdom had been fully prepared to abandon the inhabitants. On 23 May 1966 the Foreign Secretary, speaking in the House of Commons, had excluded the inhabitants of Gibraltar from the negotiations between the United Kingdom and Spain, and on 12 July 1966 the United Kingdom had proposed to Spain the reduction of the so-called Gibraltar government to a municipality.

Such action would have been tantamount to abandoning the stratagems employed in introducing the 1964 Constitution, which the United Kingdom was now trying to revive by means of the referendum. Moreover, when the Special Committee's resolution of November 1966 had completely ignored the inhabitants of Gibraltar, the United Kingdom had not protested but had merely abstained from voting. Yet, when Spain demanded the decolonization of the Rock in accordance with United Nations recommendations, the United Kingdom immediately invoked the interests of the inhabitants. It was natural that it should do so, since the sovereignty over the military base which the United Kingdom was now forcing the inhabitants of Gibraltar to defend was an essential part of its interests. As recently as 25 July 1967, the United Kingdom Minister of Defence had told the House of Commons that his Government intended to maintain its garrison, the airport, the shipyard and other installations in Gibraltar. The United Kingdom's prime military objective could hardly have been better expressed. The second aim of the referendum - that of setting the inhabitants of Gibraltar against Spain - emerged clearly from a statement by the Foreign Secretary to the House of Commons on 23 May 1966 to the effect that the aim of the negotiations with Spain was not the decolonization of Gibraltar, but rather the institution of civilized relations between Spain and Gibraltar. The United Kingdom was, in fact, employing its ancient tactics of "divide and rule". As in many other parts of the world, the United Kingdom was deliberately creating a complicated and explosive situation on the Rock. Its sole aim was to make sure that the dispute did not appear for what it was, namely, a colonial dispute between an occupying Power and a partially occupied country, but rather as a conflict between Spain and 25,000 peace-loving people who did not wish to be absorbed by Spain.

56. The referendum was based on the idea that the administering Power had obligations only towards colonized people who were in the process of being decolonized. In the eyes of the United Kingdom, the colonized people were the British inhabitants of the Rock, despite the fact that, in 1963, the latter had themselves told the Special Committee that they were not the victims of colonization.

57. The United Kingdom was attempting to persuade the United Nations and Spain that the Gibraltarians, subjects of Her Majesty installed after the occupation, should decide the future of the Territory. It was trying to prove that those subjects were the sole population of Gibraltar and the sole victims of the Gibraltarian colonial situation. According to that argument, Article 73 of the United Nations Charter would take priority over Article 2 (4), to which paragraph 6 of the Declaration on the Granting of Independence conformed. The interests of the inhabitants of Gibraltar, when bound up with the specifically military interests of the United Kingdom, were tainted with colonialism, and it was at that point that they were questioned by Spain.

58. When the Special Committee had considered the question of Gibraltar in 1964, it had been shown that the population established in Gibraltar after the British occupation had been virtually prefabricated by the United Kingdom. It was therefore important to know exactly who would be eligible to vote in the referendum. Of the current population of approximately 24,500, some 4,000 were United Kingdom or Commonwealth nationals, and approximately 2,000 were foreigners, mostly Spanish citizens. Thus, there were approximately 18,500 "true" Gibraltarians, all of whom were British subjects, entitled to vote in the referendum, a "true" Gibraltarian, according to the Gibraltarian Status Ordinance of 1962, being a person registered as a Gibraltarian. However, only persons born in Gibraltar on or before 30 June 1925, together with their wives and legitimate dependants, were eligible for inclusion in the register. The 1925 date was significant, since the first Indian child of parents who had settled in Gibraltar had been born after that date; naturally, the United Kingdom authorities had not wanted that child to enjoy the same privileges as the other British subjects who had come to the Rock to take the place of the expelled Spanish population. Furthermore, the same Ordinance provided that the Governor in Council might order the deletion from the register of any person if he was satisfied that such person had, within ten years of being registered, shown himself by act or speech to be disloyal towards Her Britannic Majesty. Although 13,572 persons had been eligible to vote in the election held in Gibraltar in May 1967, almost one half had abstained, despite the fact that the election had been vital for the future of the Rock. In the circumstances, the

outcome of the referendum was already clear, and no useful purpose would be served by sending either Spanish or United Nations observers merely to prove that a population controlled by London voted as London had decided.

59. The persons inscribed in the register did not, however, constitute the entire population of Gibraltar. Five thousand Spanish workers worked in Gibraltar but were not permitted to live there. Many of them were the descendants of workers who had also worked in Gibraltar. However, they and their families, totalling some 60,000 persons, would not be allowed to participate in the referendum, nor would the descendants of the true Gibraltarians expelled in 1704 living in the town of San Roque or the neighbouring peoples of El Campo. As the Mayor of San Roque had stated in 1964, any decision which ignored the fact that the Campo de Gibraltar was united geographically, demographically and economically with the Rock would be nonsensical. In view of the composition of the electoral roll, the United Kingdom could hardly invoke Article 73 of the Charter while ignoring Article 2 (4) of the Charter and paragraph 6 of the Declaration.

60. Furthermore, many of those inscribed in the register had acquired a "pied noir" mentality and had become agents, rather than victims, of the colonial situation. The Gibraltarian publication Vox had intimated that the result of the discussions in the Special Committee on the question of Gibraltar was a foregone conclusion in favour of Spain; it had stated that Gibraltar must never disappear into "alien hands" and had called on the United Kingdom to adopt a "tougher policy". That was hardly the voice of a victimized people wishing to safeguard its interests.

61. In the circumstances, the United Kingdom's sole obligation towards the Gibraltarians was to facilitate free entry into the United Kingdom for those who did not wish Gibraltar to be decolonized - an obligation which the United Kingdom Government did not wish to assume. On the contrary, the United Kingdom immigration laws refused entry to the British subjects it wished to maintain on the Rock. An evasive reply had been given to a question asked in the House of Commons concerning the establishment of an entry quota for Gibraltarians, and the Home Secretary had clearly stated that Gibraltarians would not be allowed to enter the United Kingdom without restriction. Therefore, if the decolonization of Gibraltar took place in accordance with the foreseeable results of the referendum, it would be the first time that the loyal subjects of an occupying Power had decided upon the destiny of a colonial Territory - an arrangement which his Government expected that the United Nations would reject.

62. Fortunately, some Gibraltarians appeared to be more interested in preserving the cultural, social, religious and economic identity of the inhabitants of the Rock than in defending the military interests of the United Kingdom. According to a letter published in the Gibraltar Post of 12-13 August, the local Press had refused to publish a petition sent by a Gibraltarian to the United Kingdom Government concerning the untimeliness of the referendum. The tone of the letter gave some indication of the coercion probably exercised not only on the writer but on all Gibraltarians who felt that the best interests of Gibraltar would be served by Spanish-British understanding. The petition, which had been printed by Vox in its issue of 15 August 1967, had stated, inter alia, that no rational Gibraltarian should be asked to accept alternative (a) of the referendum, since the proposals did not set out terms of settlement which could be effectively accepted, and that, with regard to alternative (b), the suggestion that a negotiated solution between the United Kingdom and Spain would result in a severance of the links between Gibraltar and Britain and the abolition of democratic institutions in Gibraltar and would absolve Britain of its responsibilities was alarming, since Gibraltar would have to look mostly to the United Kingdom, following a settlement, for guarantees of the settlement and for its continued protection. The petition had gone on to express serious doubts concerning the extent to which the interests of the Gibraltarians were being advanced by the referendum, and had stated that those interests lay in a negotiated solution of existing differences - a solution which appeared to be excluded by the terms of the referendum as it stood. It had concluded by requesting the United Kingdom Government to reconsider its decision to hold a referendum and by further requesting that, if the referendum must be held, it should be with the express approval of the United Nations and with the full participation of Spain, which should bind itself to accept the result. If neither of those alternatives were possible, it requested that the terms of the referendum should be redrafted to meet the objections expressed.

63. The Spanish Government could not in all honesty ignore the terms of that petition, and it was ready to protect the religious, cultural, economic and sociological identity of the inhabitants of Gibraltar from all the consequences of decolonization. With that end in view, the Spanish Government had, in May 1966, proposed to the United Kingdom the signing of an agreement to protect the interests

of all the inhabitants of Gibraltar, whether or not they were inscribed in the register. In December 1966, it had reiterated that proposal and explained the need for establishing a statute for the inhabitants of Gibraltar. In July 1967, in its memorandum commenting on the United Kingdom referendum, the Spanish Government had proposed that the two countries should jointly consult the Gibraltarians on the interests they wished protected after the decolonization of Gibraltar. However, none of those proposals had been accepted, because they were based on the fact that Gibraltarian interests were distinct from the British interests involved. It was surely time to separate United Kingdom military and imperialist interests in Gibraltar from the specific interests of the Gibraltarians themselves. After that was done, Gibraltarian interests could be examined by Spain and the United Kingdom under the supervision of the Secretary-General and, once defined and guaranteed, they would fall within the scope of paragraph 6 of the Declaration. Needless to say, the United Kingdom referendum was not the most appropriate method of discovering what those interests were. The Special Committee and the General Assembly should therefore request it to refrain from holding the referendum. There were, after all, many interests involved; some non-Gibraltarian residents might well feel that they would wish to leave Gibraltar after decolonization, and Spain would be willing to examine their cases individually and to provide economic and other assistance if necessary. In addition, many British subjects, whether on the register or not, might not wish to remain in a Territory no longer under British sovereignty, and in that respect the United Kingdom Government had an obligation to allow them free entry to the United Kingdom. The interests of all who wished to remain on the Rock would be fully protected under the statute proposed by Spain.

64. The representative of Venezuela recalled that his delegation had stated its views on the question of Gibraltar on many occasions in the Sepcial Committee and the General Assembly. It considered that the problem was one to which General Assembly resolution 1514 (XV), and particularly paragraph 6 of the Declaration, was applicable. Basing itself on that paragraph, the General Assembly had decided that the most effective way of solving the problem was to invite the parties concerned to negotiate - a decision confirmed in its resolutions 2070 (XX) and 2231 (XXI). If the colonial problem of Gibraltar had not fallen within the scope of paragraph 6 the United Nations itself would have had the responsibility of supervising the Territory's evolution towards self-determination. It was precisely because the problem affected the territorial integrity of a Member State that the General Assembly had asked the parties to negotiate, thus achieving the decolonization of Gibraltar through the recognition by the United Kingdom of Spain's rightful sovereignty over the Territory.

65. History offered many examples of the kind of territorial ambitions which had brought about the situation in Gibraltar. Paragraph 6 of the Declaration provided a safeguard for countries which were unable to defend their rights or had had to acquiesce in the annexation of a part of their territory. When that paragraph had been adopted, the sponsors had made it clear that it meant that the principle of self-determination could never affect the right of any State to territorial integrity. It had also been pointed out that many territorial disputes could not be resolved thrcugh the application of the principle of self-determination because an equally important principle - that of the territorial integrity of a country - would then be violated. The referendum which the United Kingdom planned to hold in Gibraltar contravened paragraph 6 of the Declaration, and also the provisions of the Charter guaranteeing the territorial integrity of Member States. The words "the interests of the people of the Territory" in General Assembly resolution 2231 (XXI) were meant to indicate that the solution to the problem of Gibraltar could not be subject to the wishes of the population, because a colonial situation of the kind existing in Gibraltar affected the territorial integrity of a State. The principle of self-determination could not be used to set the seal of approval

on the plundering and injustices of the past. The Special Committee would be acting contrary to the interests of the international community if it allowed that principle to be used to perpetuate a colonial situation so gravely affecting Spanish territorial integrity. The decolonizing activities of the United Nations were guided by two basic principles: the defence of the inalienable right of peoples to freedom, self-determination and independence, and defence of the equally essential right of States to claim territories seized from them by force.

66. It was surprising and paradoxical that, while the United Kingdom was planning a referendum in Gibraltar, it was persisting in its refusal to hold one in the six Caribbean Territories, whose peoples' right to self-determination did not affect the territorial integrity of any country. The referendum could never affect the General Assembly's definition of the problem of Gibraltar; its only possible purpose was to grant the population of Gibraltar the right to perpetuate a colonial situation which violated Spain's territorial integrity. The Spanish Government agreed that the interests of the people of Gibraltar must be adequately safeguarded in the decolonization of the Territory and had proposed the drafting of a special statute guaranteeing those interests.

67. The representative of Iraq said that his delegation had welcomed the Special Committee's decision to give the question of Gibraltar the priority it deserved. The statements made by the representatives of the United Kingdom and Spain, and a study of the relevant General Assembly resolutions, showed the urgency and importance of that question, and the United Kingdom's request that detailed discussion of it should be postponed until after the referendum had been held could not, therefore, be entertained. If the Special Committee did not examine all pertinent information before the referendum was held, it would be helping the United Kingdom to disregard the role of the United Nations and frustrate the hopes of both colonial and freedom-loving peoples.

68. He agreed with the views expressed by the representative of Spain at the previous meeting in challenging the validity of the referendum, which violated the provisions of the General Assembly's resolutions and was based on a unilateral decision by the administering Power. Spain was right not to recognize the results

of the referendum, and the presence of a United Nations observer would be pointless if the referendum was conducted in the manner proposed. Furthermore, the administering Power had not recognized the fact that the relevant resolutions required consultations between it and the Spanish Government. The questions to be put to the voters were unacceptable, in that they neglected the decisions of the United Nations and were tantamount to asking the voters to decide Gibraltar's constitutional future.

69. The administering Power had a duty to do its utmost to liquidate its powers in Gibraltar; to that end, it should be dismantling its military, naval and air base, instead of planning unilaterally to hold a referendum. The base was a real threat to Spanish sovereignty, to international peace and to neighbouring countries. It was easy to understand what the United Kingdom hoped to gain from the referendum, the results of which were a foregone conclusion, since the decision to hold it, the date, the type and number of voters eligible to participate and the issues to be voted upon had all been decided unilaterally without consultation with Spain. All that was needed to make the referendum appear legitimate and authentic was the presence of a United Nations observer, but to send one would be an act of capitulation to the administering Power and an endorsement of its defiance of the United Nations.

70. His Government had placed high hopes in the negotiations between the two countries. The Spanish Government's willingness to implement General Assembly resolutions 1514 (XV) and 2231 (XXI) in good faith had been made crystal clear in documents and statements to the Committee. Spain's numerous practical suggestions had been met by the evasive strategems of the administering Power. The referendum was a transparent manoeuvre threatening the whole future of the area. The United Kingdom's insistence on implementing similar illegal plans in other parts of the world, in defiance of United Nations decisions, had not ended in the victories which it had expected. He therefore hoped that the United Kingdom would reconsider its decision and negotiate an agreement with Spain, thus proving to the world that it genuinely wished to assist in the liberation of all colonial peoples and areas in co-operation with the United Nations.

71. His delegation wished to stress that it considered General Assembly resolution 1514 (XV) in its entirety to apply to Gibraltar, the future of which was governed by paragraph 6 of the Declaration.

72. The representative of Chile said the statements made by the representatives of the United Kingdom and Spain showed clearly that General Assembly resolution 2231 (XXI) was not at present being implemented. Since the adoption of that resolution, no progress had been made in the process of decolonization in Gibraltar and negotiations had not been continued. That was a matter for serious concern. Furthermore, the forthcoming referendum did not comply with the terms of United Nations resolutions since the only alternatives offered to the population of Gibraltar were acceptance of the proposals of the Spanish Government as a basis for agreement, or a continuation of the present colonial status under the United Kingdom. In the consensus adopted at the Special Committee's 291st meeting in October 1964 (A/5800/Rev.1, chapter X, paragraph 209), the United Kingdom and Spain had been invited to begin talks in order to reach a negotiated solution in conformity with the provisions of General Assembly resolution 1514 (XV), bearing in mind the opinions expressed in the Special Committee and the interests of the people of the Territory. Resolution 2070 (XX) had invited the two Governments to begin the talks without delay and resolution 2231 (XXI) had reaffirmed resolution 2070 (XX) and the consensus of October 1964.

73. From the decisions of the General Assembly, it was clear, first, that Gibraltar was a colonial Territory to which resolution 1514 (XV) was fully applicable; and secondly, that a certain territorial claim existed and that operative paragraph 6 of resolution 1514 (XV) should be taken into account. None of those decisions had called for the speedy recognition of the principle of self-determination in respect of the population of Gibraltar, despite the fact that that was one of the basic principles proclaimed in resolution 1514 (XV). The reason for that was clear: the General Assembly was aware that self-determination could, in the case of Gibraltar, lead to the disruption of national unity and territorial integrity. Furthermore, the inhabitants were not like other peoples subject to the colonial yoke, to whom the United Nations gave the choice of freedom. The General Assembly had therefore called for negotiations between the two parties to the dispute, taking into account the interests of the people, rather than for a referendum to determine their wisnes.

74. Regrettably, however, negotiations had not taken place and the United Kingdom had decided unilaterally to hold a referendum which had so many limitations that its validity could hardly be upheld, even if the United Nations had called for it.

The United Kingdom had arbitrarily decided who should vote, since the voting register was subject to the will of the Government. For various obscure reasons, some of those who had been born and now resided in the Territory, as well as the Spanish workers who had to leave the Territory before nightfall, would not be allowed to vote. Moreover, of the alternatives offered in the referendum, one was based on preliminary considerations which should have preceded negotiations, and the other amounted to a maintenance of the status quo. The referendum was therefore contrary to the letter and spirit of the General Assembly resolutions and the 1964 consensus of the Special Committee. It was important that negotiations should be held between the Governments of the United Kingdom and Spain with a view to the full implementation of resolution 1514 (XV), taking into account the interests of the people of the Territory, and his delegation would support any proposal reaffirming that opinion.

75. The representative of Syria said that resolution 2231 (XXI) reaffirmed that Gibraltar was a colonial Territory, to which resolution 1514 (XV) was fully applicable and that the process of decolonization should be expedited. The liquidation of the colonial presence in Gibraltar was essential in the interests of international peace and security, since it was used by the colonial Power mainly as a military base and posed a permanent threat to the independence and integrity of the developing nations of Asia and Africa as well as to their sovereignty over their natural resources. Secondly, since the Territory belonged historically and geographically to a sovereign State from which it had been severed by conquest, the administering Power and the original owner of the Territory had been called upon to conduct negotiations concerning the process of decolonization, taking into account the interests of the people of the Territory.

76. The United Kingdom had clearly been determined in advance to break off the negotiations and to ignore the provisions of resolution 2231 (XXI), yet it had claimed that its attitude had been precipitated by Spain's harassment of its Air Force. No United Nations resolution, nor any rule of international law compelled Spain to give up its sovereignty over its air space, especially when foreign air activities were admitted to be of a military nature. The fact that Spain had granted permission for such activities in the past did not mean that it had permanently abandoned its sovereign rights. The United Kingdom's argument was

irrelevant and its intimidation of the Spanish population in the vicinity of the frontier, together with its attempts to link Spain's protests to the question of decolonization were no indication of its good faith.

77. The administering Power had then unilaterally announced the holding of a referendum, thus arrogating to itself a power not conferred upon it by the United Nations resolutions concerning Gibraltar, which had called for negotiations rather than a referendum. The people were to be offered a choice of allowing the United Kingdom to retain its present responsibilities, which appeared to indicate a new phase of colonization rather than decolonization, or of passing under Spanish sovereignty. The Territory was, however, fundamentally Spanish and Spanish sovereignty had only been suspended as a result of force; force could not eliminate sovereignty, if international relations were to be guided by the United Nations Charter.

78. The United Kingdom claimed that it cared for the interests of the population, yet it wished to perpetuate its conquest and retain Gibraltar as a military base for the purposes of colonial expansionism and imperialist domination, using the innocent inhabitants as manpower. The Government of Spain, on the other hand, pledged to respect the individual rights of the inhabitants, their freedom of religion, the freedom of their Press, their security of domicile and of employment, as well as to preserve their municipal institutions and to allow them to retain their British nationality.

79. The representative of the United Kingdom had claimed at the previous meeting that the Special Committee had been aware of the steps it had taken and had referred to the communication from his delegation to the Secretary-General reproduced in paragraphs 15 and 16 of the Secretary-General's report (see annex I). That was not, however, the proper way to consult the Special Committee. The referendum was, in fact, an ultimatum. In essence, the United Kingdom had announced that it had decided to hold a referendum, the results of which were a foregone conclusion because of the way in which it had been organized, and that its decision admitted of no appeal.

80. Perhaps the administering Power could explain why the electoral register of Gibraltar had been closed to all those born after 30 June 1925 and why the Governor-in-Council had been empowered to delete from the register the names of those who had proved by act or speech to be disloyal to the Queen, so that out

of a total population of 25,000 or more only some 13,000 would be consulted as to the future of the Territory. He wondered whether the Gibraltarians of Pakistani or Indian origin would be eligible to vote, and why the 5,000 Spanish workers who contributed daily to the economy of Gibraltar were denied any right of residence, and consequently of the vote. The representative of the United Kingdom accused Spain of prejudging the referendum, yet he himself had done that when he had asserted that the Gibraltarians did not wish to come under a Spanish régime. If he was sure of that, then the referendum was merely a formula to legalize the unlawful occupation.

81. The United Kingdom representative had stated that his Government was ready to negotiate with Spain after the results of the referendum were known. Since, however, the referendum involved a decision on sovereignty, which was Spain's major interest, there would be nothing left to be negotiated if the results of the referendum were favourable to the United Kingdom, as the United Kingdom representative expected. In the interests of the inhabitants of the Territory, and in the interests of Spain, justice should be done.

82. The representative of the United Kingdom, speaking in exercise of the right of reply, said that it had emerged very clearly from the statements of the Spanish and other representatives that Spain's entire case rested on the central assumption that Spain had a right to Gibraltar. It was argued that, because of that right, the present status of the Territory was an infringement of Spanish territorial integrity and that, as a result, Article 2 (4) of the Charter and operative paragraph 6 of resolution 1514 (XV) were applicable. The great flaw in that argument was that Spain had no right to Gibraltar at all. Only if the United Kingdom were to relinquish sovereignty over Gibraltar to a third party would Spain have any such right. The relinquishment of sovereignty could not arise from the actual holding of a referendum.

83. Spain had no right to Gibraltar - no legal right, no political right, and no right in cultural, economic, social or human terms. The Territory did not belong to Spain and had not belonged to Spain for more than two and a half centuries. Gibraltar was British; before that it had been Spanish and before that Arab territory - as its very name showed. It had been British for longer than it had been Spanish and the United Kingdom's possession of it was not an infringement

of Spanish territorial integrity; still less was it a threat to that country's political independence. Spain's whole case rested on a single spurious claim and if it was contended that the situation in Gibraltar conflicted with Spanish territorial integrity it was for Spain to explain its refusal to submit the question to the International Court of Justice.

84. A whole edifice of argument had been constructed on the claim that operative paragraph 6 of resolution 1514 (XV) was enshrined in resolution 2231 (XXI). It was true that resolution 1514 (XV) was recalled in that resolution, but there was no reference to operative paragraph 6 of it. The consensus of the Special Committee adopted on 16 October 1964 affirmed that the provisions of the Declaration were fully applicable to the Territory. Yet, there was no prejudgement and no singling-out of one facet of the resolution to the total exclusion of others. Indeed, scrupulous care had been taken in framing the resolutions and the 1964 consensus to avoid making prior judgements. If any such judgement had been made, it had been to acknowledge Gibraltar's status as a Non-Self-Governing Territory, which was clearly incompatible with Spain's assertion that Gibraltar was part of Spain's natural territory, illegally occupied by the United Kingdom.

85. There was no mystery in the fact that the Gibraltarian Status Ordinance set July 1925 as the deadline for birth in the colony as a qualification for Gibraltarian status. There was no justification for the unworthy insinuation which the representative of Spain had sought to make in that connexion. The Ordinance had been passed only five years earlier and had been intended to revise an Order in Council, much of which had been in force since 1885. When the Ordinance had been enacted, the opportunity had been taken to advance the qualifying date of Gibraltarian status by a convenient period, namely a quarter of a century, from 1900 to 1925. The intended effect had simply been to extend Gibraltarian status to various people, irrespective of their origin, who had settled in Gibraltar and made it their home since 1900 and before 1925.

86. As to the Spanish representative's suggestion that there was something sinister in the Governor's powers under the Ordinance, those powers were precisely parallel to those in the United Kingdom whereby the Government was enabled to confer British nationality by means of naturalization and even, in certain circumstances, to revoke such naturalization. There was nothing unusual about

such a provision. In actual fact, that power under the Gibraltarian Status Ordinance had never so far been used.

87. As to the suggestion that, because the 1967 Order in Council providing for the referendum contained a general reference to the 1964 Gibraltar Constitution, the referendum was in some way part of that Constitution, it was readily apparent that the connexion was solely on a plane of technical and verbal interpretation. The referendum was quite distinct in its provisions from the Constitution.

88. It was very clear from Chapter XI of the Charter and from the relevant United Nations resolutions that it was the interests of the inhabitants of the Non-Self-Governing Territory of Gibraltar which mattered. The Special Committee's consensus on 16 October 1964 referred expressly to "the interests of the population of the Territory". Spanish citizens who worked in Gibraltar by day but slept in Spain at night were not inhabitants of Gibraltar and not, by any normal definition, part of its population. To allow them to vote in the referendum would accord neither with the Charter nor with the relevant United Nations resolutions. The existing regulations provided that persons of both United Kingdom and Spanish origin would be excluded from the referendum. The omission of the United Kingdom personnel in Gibraltar, civilian and military, helped to account for the gap, to which the Syrian representative had drawn attention, between the figure of 25,000 and the figure of some 13,000 who were expected actually to be eligible to vote. Moreover, the figure of 25,000 included minors and children. He wondered whether those arguing that Spanish daily workers in Gibraltar should be allowed to vote would also advocate that United Kingdom residents there should be allowed to vote in a referendum to decide how the inhabitants of the Territory viewed their interests. Obviously, the proper and right course was to confine the vote to the true inhabitants of Gibraltar, which was precisely what had been done.

89. The allegation that the referendum conflicted with the United Nations resolutions was also unjustified. The mere fact that the resolutions did not specifically require a referendum did not mean that the referendum was contrary to them. Indeed, resolution 2231 (XXI) expressly required Spain and the United Kingdom to take account of the interests of the Gibraltarians. The sole purpose of the referendum was to give such people an opportunity to express their views. His Government had sought to conduct the referendum in co-operation with Spain,

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but the latter had refused. There would be impartial Commonwealth observers and the United Kingdom would welcome a United Nations observer. The referendum was nothing more or less than a consultation of the Gibraltarian people, by democratic means, about their own view of their own interests - a matter on which clear and definite evidence was obviously needed if the requirements of the General Assembly resolutions in 1966 were to be met. The United Kingdom, as the acknowledged administering Power of an acknowledged colonial Territory, was holding a formal and democratic consultation of the peoples of that Territory, precisely in the manner so often advocated in the Special Committee.

90. The representative of Spain observed that the fact that Gibraltar still bore the imprint of its Arab past in its name was no justification for the United Kingdom's assertion that it did not belong to Spain. The names of many Spanish cities were the precious inheritance of a glorious Arab past whose treasures Spain preserved with pride. The United Kingdom might equally well suggest the return of Guadalajara or any other Spanish city to the Arabs. The United Kingdom's contention that Gibraltar had belonged to Spain for only two and a half centuries was surprising. The Hispanic nation had begun to take shape at the time of the Greek, Phoenician, Carthaginian and Roman settlements. It had grown accustomed to occupations and when the Arabs had arrived they had been welcomed. They had merged with the Spaniards to create a race which, to the benefit of mankind and history, had settled in Spain and spread to the Americas.

91. The shameful and deplorable history of Gibraltar showed how, in 1704, the United Kingdom had treacherously taken advantage of Spain's weakness to impose the Treaty of Utrecht. Nevertheless, the concessions under that Treaty had been limited by a series of conditions: there was to be no open communication by land and there would be no extension across the Territory; all that had been ceded was a military fortress. No jurisdiction had been involved. Yet, the first act of the United Kingdom on occupying the Territory had been to seize the Rock and then to expel the Spanish inhabitants. Although another population had started to take shape on the Rock, it had never been sufficient to satisfy the needs of the United Kingdom's military base. From the seventeenth century to the present day, the Spanish population, which still had to go to the Rock to earn its daily bread and to maintain the ties with the town which his country still considered Spanish, had

not been allowed to sleep in the city and re-establish its roots on the Rock. In 1830, the United Kingdom had declared Gibraltar a Crown Colony and a gradual invasion of the surrounding area had taken place until, in 1909, the first wall of shame in Europe had been built. A municipal council had been established in 1923 and in 1946, before Spain had joined the United Nations, the United Kingdom had started to submit information on the Territory, possibly as security for its own rights. If those rights had been truly legal, the United Kingdom would have overlooked Article 73 of the Charter, omitting Gibraltar from the list of Non-Self-Governing Territories in its possession. When Spain had been admitted to the United Nations on 14 December 1955, it had expressed reservations regarding the submission of that information. It should not be forgotten that Gibraltar was not a Territory but a Rock, the mountain of Djebel Tarik, the Rock of Gibraltar.

92. The United Kingdom representative had tried to show that operative paragraph 6 of resolution 1514 (XV) contained the principle of the maintenance of territorial integrity. That principle had been clearly defined to mean that no country whatever could be dismembered; it did not apply exclusively to countries which were still colonial possessions. In 1963, when the Special Committee had been debating whether Gibraltar should be included in its agenda, the United Kingdom had immediately requested that the Committee declare itself incompetent to deal with the question on the grounds that it was a matter in which the United Kingdom was sovereign. The United Kingdom had become a victim of its own actions. It had claimed that, by virtue of the Treaty of Utrecht, it was sovereign over the Territory whereas, in 1830 it had declared it a Crown Colony and in 1946 had stated that it was a Non-Self-Governing Territory. The aim of that skilful manoeuvring was to ensure a solution favourable to the United Kingdom's own interests.

93. When, in 1963, the Special Committee, through lack of time, referred the question to the General Assembly, the United Kingdom had informed the petitioners from Gibraltar who were then present that the Special Committee had decided not to take a decision on the matter. That had been a further manoeuvre by the United Kingdom to ensure that the people of Gibraltar would not be surprised to learn that the question was to be taken up again in 1964. The Committee had adopted a consensus in 1964 to the effect that a dispute existed, that Gibraltar was a colonial Territory and that it should be decolonized through negotiations,

ith due regard for the interests of its population. In April 1964, before the onsensus had been adopted, the United Kingdom had announced its intention of aming a Chief Minister, who was also the President of the Assembly and the Mayor. he Committee, however, had reached its consensus despite the facts placed before t by the United Kingdom. The adoption of General Assembly resolution 2070 (XX) n 1965 had been followed in 1966 by the adoption of resolution 2231 (XXI). It was curious that the United Kingdom should now contend that it had an absolute right over Gibraltar, that Gibraltar was not part of Spain, and that Spain had no rights whatsoever in that connexion. It was the United Kingdom which decided who should have the right to vote and argued that the provisions of the law in Gibraltar were identical with those in the United Kingdom. But whereas the United Kingdom was not a colony, Gibraltar was and the circumstances were therefore not the same. Chapter 218 of the Gibraltarian Status Ordinance stated that the Governor in Council might, in his absolute discretion, order that the Registrar should delete from the Register the name of any person who had been registered by virtue of an order made by the Governor in Council if the Governor in Council was satisfied that such a person had, within ten years of being so registered, showed himself by act or speech to be disloyal or disaffected towards Her Majesty. That showed how the Governor of Gibraltar, subject absolutely to his own discretion, could do whatever he wished with the Register.

94. The representative of the Union of Soviet Socialist Republics said he would like to know whether, as reports in the Press indicated, the Government of Spain would be prepared to settle the question of Gibraltar on the following basis: the United Kingdom would recognize Spanish sovereignty over Gibraltar and Spain would agree to the presence of a British base on Gibraltar.

95. The representative of the United Kingdom said that the logical consequence of the Spanish representative's assertion that Gibraltar was not a Territory but a Rock was that General Assembly resolution 1514 (XV) could not be applicable to it - something which revealed the inherent contradiction in the Spanish position.

96. The proposals to which the Soviet Union representative had referred had been made on 18 May 1966 by the Spanish Government, and constituted the first of the two alternatives to be put before the inhabitants of Gibraltar in the referendum.

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97. The representative of Spain recalled that Spain had become a Member of the United Nations in 1955, some ten years after the United Kingdom had declared Gibraltar to be a Non-Self-Governing Territory, and had only been able to express its reservations since that time. When, in 1963, the Special Committee had taken up the question of Gibraltar and the United Kingdom representative had invoked the Treaty of Utrecht, the Spanish delegation had merely observed that it wished the reversion clause in that Treaty to be borne in mind, and careful account to be taken of operative paragraph 6 of General Assembly resolution 1514 (XV).

98. He reminded the Soviet Union representative that a copy of the Spanish Red Book had been transmitted to the Soviet Union delegation, including the proposals made by Spain on 18 May 1966.

99. There were two elements at stake in Gibraltar: first, the interest of the inhabitants themselves, and secondly, the military interests of the United Kingdom. His delegation had expressed its surprise in the First Committee of the General Assembly at its twenty-first session that the Soviet Union proposal relating to the elimination of foreign military bases had not referred to bases in Europe. Spain had then raised the specific case of Gibraltar. It had even stated that it was prepared to have the base in Gibraltar dismantled; since, however, the offer his Government had made to the United Kingdom had been turned down, it was ready to abide by any decision the United Nations might take.

100. The representative of the Union of Soviet Socialist Republics observed that th Spanish Red Book contained information only up to 1965 and that the proposals he ha referred to had been made in 1966.

101. The representative of Spain said that the proposals made by the Spanish Government on 18 May 1966 had been described in the 1671st meeting of the Fourth Committee of the General Assembly at its twenty-first session (A/C.4/SR.1671).

102. The representative of the Syrian Arab Republic said he was somewhat bewildere by the statement of the United Kingdom representative to the effect that Gibraltar was British and could be nothing else, and that Spain had no right whatsoever to the Territory. If that was so, logically there would be no need for a referendum nor for Spain to be a party to any negotiations. Furthermore, the United Kingdom had stated that it wished to assess where the interests of the population lay; however, United Nations resolutions called not for an assessment of those interest

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but for their protection; he would like to know whether the United Kingdom, like the Government of Spain, had pledged to respect those interests.

103. The representative of the United Kingdom said that, while his delegation considered that Spain had no rights with regard to Gibraltar, that did not exclude recognition of the fact that there were legitimate Spanish interests in Gibraltar and that within the framework of United Nations resolutions a dispute existed and negotiations were necessary.

IV. ACTION TAKEN BY THE SPECIAL COMMITTEE

104. At its 546th meeting, the Special Committee had before it a draft resolution sponsored by the United Kingdom (A/AC.109/L.423). This draft resolution, after recalling the request contained in General Assembly resolution 2231 (XXI) to take into account the interests of the people of the Territory and noting the declared intention of the administering Power to consult the people of the Territory about their views of where their interests lay by means of a referendum to be held on 10 September 1967 as well as noting the statement by the administering Power that in accordance with the requirements of General Assembly resolution 2231 (XXI) it intended to make a full report to the Special Committee following the referendum, would have the Special Committee decide to resume discussion of the question of Gibraltar as soon as the full report of the administering Power was received.

105. At its 546th meeting, the Special Committee also had before it a draft resolution co-sponsored by Chile, Iraq and Uruguay (A/AC.109/L.424) which inter alia would have the Special Committee declare that the holding by the administering Power of the envisaged referendum would contradict the provisions of General Assembly resolution 2231 (XXI) and would constitute an attempt to ignore the principle of national unity and territorial integrity embodied in paragraph 6 and the final part of paragraph 7 of resolution 1514 (XV). At the 548th meeting, a revised text of the draft resolution was submitted to the Special Committee, finally co-sponsored by Chile, Iraq, Syria and Uruguay (A/AC.109/L.424/Rev.1 and Add.1), the main change being that the second part of the above-mentioned operative paragraph concerning national unity and territorial integrity would appear separately in revised form as a preambular paragraph.

106. The representative of Iraq, introducing the original resolution co-sponsored by Chile, Iraq and Uruguay (A/AC.109/L.424), said it was not too late for the administering Power to come to grips with the realities of the situation and to realize that no practical benefits were to be expected from the execution of the unilaterally arranged referendum in Gibraltar, for it would be contrary to the very spirit of the United Nations Charter and the relevant United Nations resolutions. The three-Power draft resolution contained all the necessary elements for a peaceful and legally sound solution to the problem, through the process of negotiations and discussions that was so strongly supported by an impressive majority of the General Assembly a few months before.

107. The representative of Uruguay said that the critical issue before the Special Committee was the referendum, which had been decided upon by the United Kingdom unilaterally and which represented a direct departure from the system of bilateral negotiations called for in General Assembly resolution 2231 (XXI).

108. Turning firstly to the implications of the referendum with respect to the Utrecht Treaty, he recalled Professor Oppenheim's dictum that conquest consisted in taking possession of enemy territory by military force in time of war and was only a method of acquiring territory, when the conqueror, after having firmly consolidated the conquest, formally annexed the territory. On the basis of that statement, the 1704 occupation did not give the United Kingdom any rights over Gibraltar because: (a) Spain was not then in a state of war with Great Britain and Gibraltar was not an enemy territory; (b) the occupation of Gibraltar, far from having the character of a military conquest in time of war, was limited to a mere

foreign violation of Spanish sovereignty; (c) there had been no intention of conquest on the part of Britain; (d) Admiral Rooke had acted on his own and taken possession of Gibraltar on behalf of Queen Anne; (e) Spain had reacted immediately by claiming its sovereignty over Gibraltar; (f) after having sought to recapture Gibraltar by force in 1704, 1727, 1779 and 1783, Spain had continued to maintain its claim, using the peaceful means of diplomacy and finally resorting to the United Nations; (g) Britain had never executed a formal act of annexation.

109. According to the British Encyclopedia of Adam and Charles Black, the conquerors of Gibraltar had defended the interests of Charles, Archduke of Austria, later Charles III, but even though on 24 July 1704 his sovereignty had been proclaimed over the Rock, Admiral Rooke, under his own responsibility, had given the order to raise the British flag. In other words, Great Britain, which was not at war with Spain and which intervened only to defend the rights of the pretender to the Spanish throne, had become the owner of the Rock which had been conquered on behalf of Archduke Charles.

110. Such was the title which appeared nine years later in the Treaty of Utrecht. Spain, vanquished and powerless, felt obliged to sign an instrument whereby it yielded, to the Crown of Great Britain, the city, the castle, the port and the fortress of Gibraltar. Despite that territorial segregation, conditions and limitations were established in the Treaty of Utrecht which seriously undermined the present claims of the United Kingdom. For example, in article X of the Treaty, the King of Spain maintained that the properties had been yielded to Great Britain without any territorial jurisdiction and without any open communication by land with the surrounding country. That article also stated that, if at any time the Crown of Great Britain deemed it appropriate to dispose of the property, the Crown of Spain would have the first choice to redeem the Rock of Gibraltar. Therefore, assuming that the Treaty of Utrecht could be applicable in the light of modern international law, the United Kingdom could not unilaterally change the status of Gibraltar. By doing so, it would be violating article X of the Treaty.

111. However, the Treaty of Utrecht was obsolete and completely at variance with modern international law. It dated back to the time when legal instruments were drafted in an atmosphere of prejudice and rancour and when armed battles were used as legitimate instruments in relations among States. As Professor Oppenheim had stated, the international situation had undergone major change because of the Covenant of the League of Nations and the United Nations Charter. To the extent that those instruments proscribed war, Professor Oppenheim had continued, they also invalidated the conquest of a State which, running counter to its obligations, had recourse to war. Professor Oppenheim's view was confirmed by another Cambridge professor, Sir Hersch Lauterpacht, a member of the International Court of Justice, who had stated that, since in contemporary international law war was forbidden, the results of an illegal action, such as a treaty imposed as a result of the violation of international law, could not be valid.

112. It was therefore obvious that title to Gibraltar in favour of the territorial dismemberment of Spain could not be invoked on the basis of the violent conquest of 1704 nor on the basis of a treaty that was intended to render that conquest valid in 1713. There would still be an objection to the referendum in any case because article X of the Utrecht Treaty gave a preferential option to Spain to recover the territory. Accordingly, any referendum organized by the British who inhabited the territory was devoid of legal or practical value.

113. Turning next to the implications of the referendum with respect to General Assembly resolution 1514 (XV), he observed that the latter laid down two criteria, based on different principles but having the same purpose of promoting and facilitating the freedom and independence of colonial countries and peoples. Although the principle of self-determination was the primary basis for the liberation of peoples, there were certain peculiar colonial situations, such as those of Gibraltar and the Malvinas Islands, to which the criterion of the national unity and the territorial integrity of a State must be applied. In some such cases, a referendum might serve to perpetuate, instead of abolishing, the rule of colonial Powers over territory belonging to other countries. Uruguay, whose devotion to law and justice was unquestionable, had taken that position at the time of the adoption of General Assembly resolution 1514 (XV) and had

therefore supported paragraph 6 of the Declaration. Even if the meaning of that paragraph had not been clear - which was not the case - the records of past debates would show that the intention of its sponsors and supporters had been to avoid the automatic and indiscriminate application of the principle to self-determination, which in exceptional cases could violate the principle of the territorial integrity of States recognized in Article 2 (4) of the Charter. The importance of paragraph 6 of the Declaration had been categorically reiterated by the General Assembly, one year later, in its resolution 1654 (XVI), in which the Assembly had expressed deep concern that acts aimed at the partial or total disruption of national unity and territorial integrity were still being carried out in certain countries in the process of decolonization. The Special Committee itself had been set up under the same resolution, one of the main reasons for its establishment being the need to defend national unity and territorial integrity in the course of decolonization.

114. Much more could be said concerning the implications of the referendum with respect to the provisions of the Charter and the well-established principles of contemporary international law. The vital point, however, was that the proposed referendum would constitute a violation of the principle of non-intervention in a domestic matter affecting the jurisdiction of Spain. Since the question of Gibraltar had been submitted to bilateral negotiations under the auspices of the United Nations, any unilateral act by either party which could affect the political future of the territory in dispute was a departure from the agreed procedure and an unlawful intervention in the domestic affairs of the other country. Paragraph 7 of the Declaration set out in General Assembly resolution 1514 (XV) made that point clear and left no room for ambiguous interpretation. Consequently, the referendum could not be regarded as a valid instrument of decolonization.

115. Turning lastly to the implications of the referendum with respect to General Assembly resolution 2231 (XXI), he noted that a reading of that resolution could lead to only one conclusion, namely, that the General Assembly wished Gibraltar to be decolonized through bilateral negotiations between Spain and the United Kingdom, in accordance with General Assembly resolution 1514 (XV) and taking into account the interests of the people of the Territory. It was significant that the resolution in question, like resolution 2070 (XX), of which it was basically

reiteration, made no specific mention of the principle of self-determination and referred to the interests, rather than the will or the wishes, of the people, thus departing from the terminology normally used - the obvious purpose being to place the problem within the context of paragraph 6 of the Declaration. Thus, in the case of Gibraltar - paradoxical as it might appear - decolonization was intended to benefit, not the British inhabitants of the Rock, but the territory itself or, in other words, the parcel of land of which Spain had been deprived in violation of its national unity and territorial integrity. The referendum was therefore contrary to General Assembly resolution 2231 (XXI), which provided the only practical means of a settlement through a bilateral understanding that would safeguard the interests of the people, without, however, confusing those interests with the political motive of perpetuating colonialism. That resolution had the unanimous support of the peoples of Latin America, as was evidenced by the declaration adopted at the Second Plenary Session of the Latin American Parliament in May 1967.

16. His delegation had often expressed its appreciation of the United Kingdom's contribution to decolonization, and it earnestly hoped to hear at the twenty-second session of the General Assembly that the last vestige of colonialism in Europe had been eliminated by agreement between the United Kingdom and Spain. Gibraltar might be insignificant in itself, but it constituted the southernmost geographical boundary of Spain, and the presence of an alien Power on the Rock was a scar on Spain's territorial integrity and an insult to its sovereign dignity as a State. The Treaty of Utrecht was no longer valid under contemporary international law, and his delegation was confident that the negotiations provided for in General Assembly resolution 2231 (XXI) would lead to the return of Gibraltar to Spain. Gibraltar could not escape decolonization, and the two Governments would surely be able to agree on provisions to protect all the interests of the inhabitants.

17. His delegation would not vote for any draft resolution condemning or censuring the United Kingdom, since to do so would not be constructive and would jeopardize the continuation of the bilateral negotiations.

118. The representative of the United Republic of Tanzania said that the position with regard to the implementation of General Assembly resolution 2231 (XXI) was still unclear. The statement made by the administering Power at the beginning of the discussion of Gibraltar (see paras. 20-37 above) had not provided any information which would help the Committee to formulate constructive recommendations.

119. In approaching the colonial question of Gibraltar, his delegation was guided mainly by General Assembly resolution 1514 (XV), together with other relevant resolutions of the Assembly. Particular importance should be given to the interest of the people, including their long-term interests. The Committee must ensure that the colonial Power's activities did not jeopardize the future of the Territory and its residents. Such considerations had caused his delegation to support General Assembly resolution 2231 (XXI), which, in operative paragraph 2, called upon the two parties to continue their negotiations, taking into account the interests of the people, and asked the administering Power to expedite the decolonization of Gibraltar in consultation with the Government of Spain. The terms of that paragraph had clearly not been complied with. It was distressing that recriminations should have been given prominence in the debate, and that the United Kingdom representative had placed so much stress on the alleged establishment of a prohibited air zone in the vicinity of Gibraltar. The question of Spanish air space was solely within the jurisdiction of the Spanish Government, and such matters were in any case not within the purview of the Committee, which was concerned with the decolonization of Gibraltar.

120. Resolution 2231 (XXI) called for consultation between the Governments of Spain and the United Kingdom, and the organization by the colonial Power of a referendum in Gibraltar would not further the implementation of that resolution. His delegation had always supported the principle of the consultation of colonial peoples; however, when a referendum was held, it was assumed that the object was to determine the interests of the people - both their immediate and their long-

term interests. It was clear that the holding of the referendum further jeopardized the possibilities of consultations between the United Kingdom and Spain which might lead to the decolonization of Gibraltar.

121. Secondly, all the indigenous inhabitants of the Territory should participate in any referendum. In the present case, as a result of the activities of the colonial Power, the indigenous population had been largely excluded. In any case, since the colonial Power had acted unilaterally, it was impossible to determine who would participate in the referendum and how large a part of the population would be excluded. The colonial Power had retained the right to exclude any individual who, in the view of the colonial authorities, might not support their interests.

122. Thirdly, the aim of a referendum must be decolonization. It was distressing to note that part of the referendum under discussion was aimed at perpetuating the colonial status of Gibraltar.

123. He had dwelt on the question of the referendum because it was essential for the Committee to ensure that the referendum procedure, which was one of the means by which decolonization could be effected, was not abused. The United Kingdom representative had said that the type of colonization best suited to Gibraltar could not be prejudged. That might be true, but the General Assembly had called upon the colonial Power to enter into consultations with the Spanish Government to ensure not only decolonization but also the type of decolonization and the process followed. The administering Power, utilizing a means of decolonization, had in fact jeopardized the process of the decolonization of Gibraltar. Thus the referendum would defeat the purposes of General Assembly resolution 2231 (XXI). He therefore agreed with those who called for the resumption of negotiations between the United Kingdom and Spain to ensure the full implementation of the General Assembly resolutions, taking into account the interests of the people as a whole.

124. Another aspect of the problem was the fact that Gibraltar was a military stronghold of the United Kingdom. His delegation had always opposed the establishment of military bases in colonial territories. The question arose whether a free referendum could be held under such conditions; if the United Kingdom had been interested in the decolonization of Gibraltar, a first step would surely be the removal of the military base. In view of some of the powers that had been vested in the Governor, one could not but be apprehensive about the role that the presence of the base would play in the referendum.

125. The United Kingdom representative had tried to give the impression that the United Kingdom was concerned with the interests of the people. In fact, the administering Power was always interested in perpetuating its own interests. Thus the United Kingdom Government, because it suited its interests, had contended for many years that Southern Rhodesia enjoyed internal self-government when in fact it was only the small white minority which exercised power. The Committee should not be deceived by claims that the United Kingdom was seeking to ascertain the interests of the population. In the case of the Caribbean islands, the wishes of the people had not been ascertained before the proposed new arrangements came into effect, and those arrangements had now proved to be a failure. The appropriate lessons should be learnt from the troubles in the Caribbean area and in Southern Rhodesia. He urged the United Kingdom to consider the wisdom of General Assembly resolution 2231 (XXI) and realize that the proposed referendum would not lead to the complete solution of the problem.

126. The administering Power had invited the United Nations to send an observer to Gibraltar. That would be inconsistent with the expressed views of the Committee, since it had insisted that the United Nations should be involved in a positive way with regard to the remaining colonies and not just as a passive observer of activities with which it disagreed. It would therefore have been wron for the Secretary-General to consent to the United Kingdom's request. In the case of other Territories, the administering Power had refused to allow visiting missions. The United Kingdom Government could not use the United Nations Secretariat to obtain approval for its actions from the United Nations.

7. It would undoubtedly be in the interests of the Committee if the terms of neral Assembly resolution 2231 (XXI) were to be faithfully implemented. He pealed to the United Kingdom to co-operate with the United Nations in deed and t merely in words.

8. The representative of Australia said that his delegation had been disappointed at the bilateral negotiations which were to have continued following the adoption General Assembly resolution 2231 (XXI) had come to nothing. Having listened the statements of the representatives of the United Kingdom and Spain, he derstood the Spanish case to be that Spain was the legitimate sovereign Power th respect to Gibraltar and responsible for its inhabitants. It was his derstanding that, if Spain were to enjoy the full exercise of that sovereignty, would respect the individual rights of the inhabitants of Gibraltar, their edom of religion, the freedom of their Press, and their security of domicile employment. The essence of the Spanish case was the assertion of ereignty. The United Kingdom, for its part, maintained that it was the ereign Power, and that it had primary responsibility for the future of the ple of Gibraltar, although Spain had an interest in the situation by virtue the Treaty of Utrecht.

. The Australian view was that the United Kingdom exercised sovereignty over raltar both de jure and de facto. Should Spain obtain a ruling from the ernational Court of Justice to the effect that Spain was the sovereign Power, t would naturally affect Australia's position. It must be borne in mind that United Kingdom was prepared to submit the question of sovereignty to the ernational Court and that the Spanish Government had declined to accept that edure.

. Other Governments represented in the Committee took the view that Spain was sovereign Power. That naturally led them to different conclusions from those is delegation.

. Australia did not consider that the Committee was competent to take decisions uestions of sovereignty, and would be unwise to attempt to assume such etence. The United Nations body competent to consider such disputes was the rnational Court.

132. There had been a tendency in the Committee to misinterpret General Assembly resolution 2231 (XXI). In the discussions in the Fourth Committee at the General Assembly's twenty-first session, a deadlock had been avoided when Sierra Leone had submitted an amendment introducing the words "taking into account the interests of the people of the territory" in the draft resolution. That amendment had rendered the resolution acceptable to the Australian and other delegations.

133. Furthermore, the representative of Ceylon in the Fourth Committee had expressed some surprise that the sponsors of the draft resolution had forgotten to refer to the interests of the people and had been obliged to suspend the meeting to decide whether there should be such a reference. That representative had also reminded the Committee that every people had the right to self-determination and the right to decide their own future. Those views were still as relevant as they had been the previous November. The Fourth Committee's debate had demonstrated the importance which the General Assembly as a whole attached to the right of Gibraltarians to decide their own future. Resolution 2231 (XXI), and Spain's proposal that it should negotiate a statute with the United Kingdom, had obliged the latter to consult the people of Gibraltar regarding their future. The United Kingdom's decision to hold a referendum was entirely consistent with the General Assembly resolution and a transfer of sovereignty to Spain without the prior agreement of the people would have been a repudiation of it.

134. The representative of Spain had suggested that the people of Gibraltar were a "prefabricated population", but, whatever their origins, they did exist as a separate society and the General Assembly had acknowledged that by insisting that their interests should be properly safeguarded in the negotiations between the United Kingdom and Spain. The Gibraltarians were neither Spaniards nor Englishmen but a people with its own customs, institutions and history. It existed as truly and fully as the population of Singapore, which had developed only after 1819. The Gibraltarians were as entitled to the right of self-determination as other similar groups elsewhere and that had been the view of the General Assembly in adopting resolution 2231 (XXI).

135. An important Spanish argument had been that the 5,000 Spanish workers formerly employed in Gibraltar had been denied voting rights in that colony. If that argument were accepted it could be taken to apply to other migratory workers employed temporarily in countries other than their own. As to the Spanish suggestion that the descendants of the residents of San Roque, expelled from Gibraltar in 1704, should be entitled to vote in the referendum, it was extremely difficult to understand how it could be implemented or justified.

136. Much had been said about Gibraltar's use as a military base, and some rather unfounded allegations had been made, but Gibraltar's contribution to the successful prosecution of the Second World War was noteworthy in that connexion. The allied Powers, later the United Nations, had been very thankful to have Gibraltar as a base for the maintenance of the free system of government which had produced the United Nations.

137. The representative of Spain, and those supporting his views, had claimed that the United Kingdom's retention of Gibraltar was a partial or total disruption of Spanish national unity and territorial integrity and, as such, incompatible with the Charter. Yet, operative paragraph 6 of resolution 1514 (XV) had been intended to apply, not to historical territorial claims between sovereign Member States but to the disruption of the national unity or territorial integrity of Non-Self-Governing Territories. If the Spanish interpretation of that operative paragraph were accepted, it would follow that every historic claim of one sovereign State against another would be a matter to be discussed by the Committee. It would mean that nearly every European country could lay claim to some part of another European country's territory on historic grounds. The dangers of such a doctrine were obvious.

138. Operative paragraph 2 of resolution 1514 (XV), concerning the right of all peoples to self-determination, was more directly related to the question before the Committee. By holding a referendum, the United Kingdom would be allowing the Gibraltarians to exercise that right. It had been argued that the absence of any specific reference to self-determination for the Gibraltarians in the relevant General Assembly resolutions implied that the Assembly had concurred with the Spanish contention that operative paragraph 6 of resolution 1514 (XV) was

applicable to the Gibraltar situation. The Assembly had, however, recognized that the United Kingdom was the colonial Power vis-à-vis the people of Gibraltar and not vis-à-vis the people of Spain. Moreover, as a colonial Power the United Kingdom had responsibilities under Chapter XI of the Charter towards the people of Gibraltar which, while they might not be specified in every resolution, were nevertheless continuing responsibilities.

139. His delegation had welcomed the United Kingdom's arrangements for the presenc of impartial Commonwealth representatives during the referendum and hoped that the Secretary-General would comply with the request that a United Nations Observer should also be present.

140. His Government's view was that sovereignty over Gibraltar, both de facto and de jure, lay with the United Kingdom, which was therefore the colonial Power and responsible for the future of the people of the Territory. As the colonial Power, the United Kingdom was seeking to ascertain the wishes of the people by means of a referendum, while simultaneously seeking to ensure that its bilateral treaty obligations to Spain were respected. The United Kingdom's actions were quite consistent with the letter and spirit of resolutions 1514 (XV) and 2231 (XXI) and the referendum was a step forward in the process of decolonization. For those reasons, his delegation urged the Committee to await the results of the referendum before taking further action.

141. The representative of Tunisia said that the problem of Gibraltar, while undeniably colonial in nature, was exceptional in that two administering Powers were involved in the dispute. The United Kingdom had long recognized the Special Committee's competence to attempt to find an appropriate solution.

142. There were two essential provisions in operative paragraph 2 of resolution 2231 (XXI); first, the interests of the inhabitants of the Territory must be taken into account in the negotiations between the United Kingdom and Spain and, secondly, the United Kingdom must expedite the process of decolonization in consultation with the Government of Spain. The fact that Spain was named as the partner of the administering Power was of particular importance and went beyond the mere fact that Spain had a common frontier with the Territory. It was not for the Special Committee to prove that Gibraltar belonged to Spain; the statements

by the representative of Spain and the documents provided by that Government had given sufficient proof of that. The Committee was all too familiar with colonial claims to territories conquered by force and with the various political and legal arguments advanced in attempts to justify them.

143. While his delegation did not wish to level any accusations, the question arose as to why the negotiations indicated in resolution 2231 (XXI) had not been concluded. It was significant that Spain's adoption of a decree establishing a prohibited air zone in the immediate vicinity of Gibraltar was in absolute conformity with its right of sovereignty. His delegation could not consider that decree as having jeopardized the success of the negotiations which were to have begun on 18 April 1967. The International Civil Aviation Organization had taken note of the matter but had taken no measures which could be construed as censure of Spain. The decree had, however, led to the disruption of the negotiations between Spain and the United Kingdom and the latter had subsequently decided to hold a referendum in Gibraltar. That decision had particularly surprised his delegation since, when the United Nations had requested the United Kingdom to hold referendums on other occasions, it had refused to do so, alleging that the peoples of the Territories for which it was responsible had already determined their wishes through elected representatives. Furthermore, whereas the United Kingdom had requested the United Nations to send an observer to Gibraltar for the referendum, whenever the Special Committee had urgently requested the United Kingdom to allow visiting missions to go to Territories under its control, it had always met with a categorical refusal. His delegation did not believe that the referendum could provide a solution. It was apparently intended to enable United Kingdom citizens in Gibraltar to determine their future status and, consequently, could not be considered as fulfilling the requirements of resolution 1514 (XV). The referendum could in no way prejudge the final solution of the problem and the Committee could not take it upon itself to recognize it.

144. There were certain prerequisites for any solution to the problem of Gibraltar. First, such a solution must respect resolution 1514 (XV), particularly operative paragraph 6 of it; secondly, it must respect resolution 2231 (XXI) and especially the provision that Spain and the United Kingdom should continue their negotiations,

taking into account the interests of the inhabitants of the Territory. Spain's assurances that those interests would be safeguarded were satisfactory and the process of decolonization should not be further delayed. The existence of a colonial enclave in an independent country was anachronistic and even dangerous, particularly when it was used for military purposes.

145. The representative of Spain observed that, whereas the Australian representative had stated that the question of Gibraltar was a dispute over sovereignty, the United Kingdom itself had conceded that the Special Committee was competent to examine the problem - a colonial problem with Spain as the sole victim.

146. As to the question of the interests of the people of Gibraltar which had arisen during the Fourth Committee's debate the previous year, he himself had pointed out at the time that it had been Spain which had first undertaken to safeguard those interests. It was to those "interests" that resolution 2231 (XXI) had referred.

147. Although the Australian representative had raised the question of whether the Spanish population of Gibraltar should participate in the referendum, it appeared that he had not read the Spanish statement in that connexion with any care. As that statement pointed out, from the time when the Spanish population had moved to San Roque on its expulsion from Gibraltar and had later begun to work in Gibraltar, it had never been allowed to spend the night in the Territory. The Australian representative could readily imagine what would have happened had his own ancestors been forbidden to spend the night in Australia. The Spanis population lived outside Gibraltar and was forced to leave the city at night - a situation which had lasted for 260 years.

148. As to the references to the use of Gibraltar as a military base during the Second World War, the Australian representative must concede that nobody could know what would have happened had Spain decided to neutralize Gibraltar and prevent the establishment of a military base in the Territory. That base had been built, not in Gibraltar but on the isthmus which was under Spanish sovereignty. If the Australian representative was so anxious to defend the population of Gibraltar, his Government might well ask the United Kingdom to dismantle the military base there. It would then remain to be seen how the civilian workers at the military base could continue to exist.

149. The representative of the United Kingdom, introducing his delegation's draft resolution (A/AC.109/L.423), said that he had no wish to be provocative or dogmatic. He was seeking an agreed way forward. He understood the concern of the members of the Committee but wished to make it clear that he was not asking them to reach a conclusion nor even to approve the proposals explained by his delegation. His immediate objective was a simple and limited one - namely, that no decision should be taken until the voice of the people of Gibraltar had been heard. Indeed, it would be contrary to the most elementary principles of justice and to the fundamental principles of the Charter to deny the people concerned the right to speak in their own cause. He could not conceive that any United Nations body could take a decision that conflicted with that principle. The Special Committee, more than any other, had the duty to take account of the wishes of the peoples it was concerned with and not deliberately to refuse them an opportunity to be heard.

150. The issue was not a legal one and the United Kingdom Government had offered t submit any legal issues to judicial decision. There was no question of any actior which would contravene the Treaty of Utrecht; nor was there any question of power politics or ideologies. He simply asked the Committee not to prejudge the question until the views of the people had been fairly given and heard.

151. He invited the Committee to reflect on the attitude adopted by the two Governments directly concerned. He felt that in the speeches made so far justice had not always been done to the policies pursued by the United Kingdom. There had been no welcome in the Committee for the United Kingdom's willingness to submit the legal questions to international judicial decision and to abide by the result. The United Kingdom Government had even declared its readiness to enter into negotiations with the Spanish Government with a view to Gibraltar's becoming a part of Spain, should the people of Gibraltar vote in favour of that solution. That new and very important commitment did not seem to have been accorded the recognition it deserved. The United Kingdom Government had gone even further in stating - and that was surely an act without precedent - that if the people of Gibraltar opted by a free and democratic vote to retain their links with the United Kingdom, they would be free at any time to change their minds and vote for joining Spain. However, he had not heard in the Committee any acknowledgement of the importance of that new pledge.

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152. As to the referendum, the United Kingdom had invited the Spanish Government to participate in the formulation of the first alternative, to explain its own proposals direct to the people of Gibraltar and to send an observer - not the acts of a Government antagonistic to Spain. Unfortunately, the Spanish Government had not responded in kind.

153. There were close and long-standing ties between the British people and the people of Gibraltar, and public opinion in Britain on the question of Gibraltar was intense. However, the problem was not being approached in a spirit of narrow nationalism, and all political parties in Britain were agreed that the people of Gibraltar had the right freely to express their views and to have those views taken into account. Decolonization could never mean the incorporation of Gibraltar in Spain against the inhabitants' wishes. Their rights were not to be bartered away and a denial of those rights would be intolerable. The British people were no more prepared to see the Gibraltarians' liberties spurned than their own. The British people were determined to defend the liberties of the people of Gibraltar, including their liberty to choose the incorporation of Gibraltar into Spain. The first necessity was that the people should be heard. When the choice had been made and the facts were thus before the United Nations, then whatever the result of the referendum there would be a wide range of matters for negotiation between Spain and the United Kingdom.

154. It had been said that the United Kingdom Government had not favoured the system of referendum elsewhere. That was quite true. In keeping with its parliamentary tradition, the United Kingdom preferred the method of adult suffrage, free elections and negotiation with the leaders so elected. That was good enough for the British people themselves although others might find democratic parliamentary procedures strange. However, the case of Gibraltar was unique, and the wish of the people must be openly and freely expressed in the clear light of world publicity. The United Kingdom would have liked Spain and the United Nations to send observers; however, failing that, the presence of observers from Commonwealth countries would provide the necessary guarantees of the fair and proper conduct of the referendum to be held on 10 September.

155. While the United Kingdom Government had been very ready to report, to explain and to co-operate with the Committee and with the Spanish Government, it could not share or shirk its responsibility as administering Power, and surely no one could dispute the United Kingdom's right to consult the people of a territory under its administration on a matter of fundamental importance to their future.

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156. The attitude of the Spanish Government, on the other hand, had been strangely and misguidedly negative. It had neither welcomed the offers of the United Kingdo Government nor taken the opportunity to put its case to the people of Gibraltar. Nor had Spain sought by generosity and understanding to win over the Gibraltarians Instead it had deliberately sought to alienate them and to antagonize the United Kingdom. It seemed determined not to allow negotiation except under duress. Surprisingly enough, its policy seemed to be designed to alienate the sympathies of the people of Gibraltar. It was unfortunate that the Spanish Government should attempt to achieve its aims by such methods and pressure and coercion, which were out of place in the modern world, and especially unpopular at the United Nations.

157. In conclusion, he invited the Special Committee to remember the resolutions which nearly all had supported; not to deny the importance of the people's interest and to reserve judgement until the voice of the people had been heard. Only after the administering Power had made its full report would the Committee be in a position to deliver a considered opinion. A vote for the resolution presented by the United Kingdom would not be a vote for Spain or the United Kingdom or even for the referendum, for which his Government took full responsibility. It would be a vote for reserving judgement until the missing factor was available - namely the voice of the people concerned. It would be astonishing if the fundamental right of the people to be heard before a decision was taken were to be denied at the United Nations and by the Special Committee.

158. The representative of Spain, speaking in exercise of his right of reply, sai that he wished to make clear some particulars of his Government's policy. His Government was in no way opposed to letting the people of Gibraltar express thei views. Four years previously, the Committee had heard some petitioners who had been officials of the United Kingdom administration, subject to the authority of the Governor and employed at the military bases which had been established in the Territory after its population had been expelled.

159. He was surprised that the United Kingdom representative should again refer to the proposal to bring the matter before the International Court of Justice. The truth was that the United Kingdom Government was trying to find loop-holes, for decolonization questions were not matters to be submitted to the Internation Court of Justice.

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60. He read out an article, published in the United Kingdom Press on 25 August, which mentioned movements of United Kingdom air force and naval units to Gibraltar; the presence of those troops at the time of the referendum gave reason to wonder whether the people would be able to express their wishes freely.

61. He also read out a cable he had received from his Government stating that it had denied a Norwegian military aircraft permission to fly over Spain on its way to Gibraltar, where it was to have participated in NATO military manoeuvres on 9 September. His Government had declared that it did not allow overflights of its territory by NATO aircraft because Spain was not a member of NATO, which wished to make use of military bases, such as Gibraltar, situated in usurped Spanish territory.

62. With regard to the referendum, he wondered what discretionary power the Governor had to manipulate the electoral rolls. In the first place, enrolment was subject to a cut-off on the date of birth, which had been set at 30 June 1925; in the second place, the Governor could decide to remove from the rolls the name of any person who had been disloyal to the Crown. Perhaps the United Kingdom had similar laws, but the United Kingdom was not the colony of anyone, whereas Gibraltar was a colonial Territory.

63. It was surprising to find that during the Second World War those loyal subjects of the British Crown had had to be completely evacuated from Gibraltar, while 3,000 Spanish workers had continued to go there to work and help the British. Apparently the United Kingdom Government had not considered it safe to allow those subjects to remain at their post when the Territory of Gibraltar was under attack. The use of the Territory for military purposes had resulted in the bombing of its railways, and there had been many victims.

64. The representative of Mali noted that the negotiations which had been held between the administering Power and Spain in conformity with General Assembly resolutions 2070 (XX) and 2231 (XXI) had not yielded the expected results. His delegation regretted that the Special Committee had decided to apply the method of consensus in settling the Gibraltar problem; that was tantamount to referring the question back to the Powers concerned, which were, by definition, opposed to each other. By resorting to that method, the Committee, which should take jurisdiction in all decolonization questions - and the level of development of the Powers concerned did not change in any way the colonial nature of the case - seemed to be trying to relinquish its responsibilities under resolution 1514 (XV).

165. As to the referendum which the United Kingdom was proposing to hold in Gibraltar, his delegation doubted the usefulness of such a consultation, the results of which were quite predictable. The Special Committee should ask the administering Power to refrain at present from any new initiative which was not covered by resolution 2231 (XXI). If the parties could not reach agreement, consideration should be given to finding means by which the United Nations could facilitate the search for a negotiated solution.

166. He was surprised that the administering Power should have expressed willingness to invite United Nations observers to be present at the consultation of 10 September in Gibraltar, whereas the United Kingdom had recently rejected the dispatch of United Nations observers to another Territory under its administration There was a blatant contradiction in the attitude of the United Kingdom Governmen respect for the will of the people, which was being flaunted in Gibraltar, was scarcely consistent with the policy pursued in Southern Rhodesia, where the people of Zimbabwe had never had the opportunity freely to express their views on their future and where the democratic rights of the indigenous inhabitants were systematically trampled on. In reality, the United Kingdom was trying to maintai its domination over Gibraltar, which might be of negligible importance in the perspective of global thermo-nuclear strategy but which constituted an essential link in a chain of military bases directed against young developing nations.

167. The draft resolution sponsored by Chile, Iraq and Uruguay was, in his delegation's view, a minimum text. The unilateral breaking off of the negotiatio recommended in resolution 2231 (XXI) was a fait accompli which the Committee coul not accept. In any event, he attached particular importance to operative paragraph 2 of the proposed text, which he read out, and to operative paragraph 4 He believed, as did the sponsors of the draft resolution, that some United Nation machinery should be set up to facilitate the success of further negotiations between Spain and the United Kingdom.

168. The representative of Syria supported the draft resolution sponsored by Chi Iraq and Uruguay. The decolonization process in Gibraltar was at a standstill because the administering Power had failed to respect the relevant resolutions o the General Assembly, particularly resolution 2231 (XXI), which had been adopted without opposition. The United Kingdom would do better to comply with those

resolutions instead of resorting to stratagems; it was in that spirit that the draft resolution submitted by the United Kingdom representative (A/AC.109/L.423) should be considered.

169. His delegation condemned the referendum which the United Kingdom was preparing to hold in Gibraltar. It did not, of course, oppose the idea of consulting the people; however, the proposed referendum was merely a trick designed to evade the real question, that of sovereignty.

170. The representative of the Union of Soviet Socialist Republics stressed the military aspect of the question of Gibraltar. The base and the military installations in the Territory were important parts of the strategic apparatus of the United Kingdom and its NATO allies. Moreover, the military aspects of the problem had been the central point of the discussions held between the United Kingdom and Spain, as was clear from the Secretary-General's report (see annex I). No solution that served the interests of the peoples involved - either the inhabitants of the Territory or the peoples of the United Kingdom and Spain - could be reached so long as the Territory remained a military stronghold of imperialism, and the bastion for the suppression of the national liberation movement of the peoples of the Near East, Asia and Africa.

171. The question of eliminating the Gibraltar military base had never been raised by the parties during their negotiations concerning the future of the Territory. On 18 May 1966 Spain had expressed readiness to accept the presence at Gibraltar of the United Kingdom base, the status of which would be the subject of a special agreement, and to participate "enthusiastically" in the use of the base, in co-operation with the United Kingdom or with "the defence organization of the free world". That position of the Spanish Government obviously bore no relation to the interests of the Spanish people and the other peoples of the Mediterranean region, whose security would be seriously threatened by the presence of stockpiles of NATO rockets and atomic bombs in the Territory. The nuclear weapons which the NATO countries were preparing to install in the region would be used to support various forms of provocation and aggression against the peoples of Africa and the Middle East and the other peoples as well. The fact that Gibraltar was torn away from Spain and converted into a British colony and then into a military base, which had been for centuries used for carrying out the colonial

policy of the British ruling classes, did not raise any doubts in the Committee. But the deal which the Franco régime was proposing to make with the United Kingdom on the question of Gibraltar did not remove the possibilities of using the Gibraltar base for continuation of the same colonialist and imperialist policy, only now in interest of "the defence organization of free world". The representative of the United Kingdom claimed that the forthcoming referendum in Gibraltar was aimed at enabling the people of the Territory to exercise its right to self-determination. However that statement was nothing else but manoeuvre. If the British Government cared so much about the self-determination of the people of Gibraltar, why did it withhold that right from the people of Zimbabwe. Moreove there were no doubts about the validity of a referendum held under conditions of military occupation; the result of the proposed referendum would certainly be what the colonial Power wanted. The real purpose of the referendum was to maintai colonial rule over the Territory in one form or another, a fact which the United Kingdom representative did not trouble to conceal, and thus to preserve its military base in Gibraltar. The problem of decolonizing Gibraltar could not be separated from that of dismantling the military base and demilitarizing the area. Any effective measure to end the colonial status of the Territory implied first of all the liquidation of the base and the air and naval military installations now situated there.

172. The representative of Spain, speaking in exercise of the right of reply, pointed out that the Spanish Government's statements and proposals mentioned by the representative of the Soviet Union were no longer valid. The proposals of 18 May 1966, referred to by the Soviet representative, had been superseded by other proposals which he himself had formulated on 14 December in the Fourth Committee.

173. The new Spanish proposals made no mention of any joint use of the Gibraltar base by Spain and the United Kingdom. Indeed the Spanish Government had rejected the United Kingdom proposal of 12 July 1966 concerning joint use of the base. Similarly, on 17 June, as was indicated in the Secretary-General's report, the Spanish Government had formally invited the United Kingdom Governmen to renounce all military use of the airfield situated on the isthmus connecting Gibraltar with the rest of the peninsula.

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174. Spain had asked the United Kingdom Government to draw a clear distinction between its military interests and the interests of the people of the Territory. Spain hoped that sovereignty over Gibraltar would be returned to it, but it understood the concern of the United Kingdom Government, which wanted to be able to use the military base during the transition period that would precede the restoration of Spanish sovereignty over the Territory. For its part, Spain held that it had complete freedom to make whatever proposals it deemed appropriate, so long as the United Nations had not adopted any resolution on the subject. He wished to assure the Soviet representative, however, that the granting of a military base to the United Kingdom had not been envisaged in the Spanish proposals of 14 December. Lastly, he stated that Spain would be prepared to support any proposal that might be submitted by the Soviet or any other delegation for the dismantling of the Gibraltar military base.

175. The representative of the United Kingdom, exercising the right of reply, said he wished to deal with the four points raised during the meeting. Naval manoeuvres took place constantly in the Mediterranean and the Atlantic as everyone knew; they included operations not only by United Kingdom vessels but also by NATO vessels and by vessels of the Union of Soviet Socialist Republics. There was nothing exceptional about those activities, and the fact that a change of mine-sweeping personnel, arranged long before, was to take place at about the same time as the referendum was quite unconnected with the matter under discussion.

176. As to the question of the register for the referendum, the United Kingdom believed that the genuine inhabitants of Gibraltar, as distinct from those who were not permanent residents, should have the right to vote and so to express their views. The voting regulations were designed to bring this about. If there was any doubt about the fairness of the referendum, the Spanish Government and the United Nations were invited to send observers. In any case the presence of Commonwealth observers should constitute a sufficient guarantee.

177. With respect to permission for Spanish workers to stay and spend the night in Gibraltar, there were certain restrictions regarding outside residents, as the restricted size and limited accommodation of Gibraltar required, but the necessary permission to enable Spanish workers to live and sleep in Gibraltar had been readily given for years. The number of such applications granted, which had for some time been about 1,500 a year, had begun to decrease only when the Spanish Government had created difficulties and imposed restrictions.

178. Lastly, in reply to the Malian representative, he said that the United Kingdom, far from clinging to its Territories in Gibraltar or elsewhere, had for twenty years made a greater contribution to ending colonialism than any other country; indeed 99 per cent of the inhabitants of the former British colonial empire now lived in independent countries.

179. The United Kingdom had always upheld the principle of consultation and consent and it therefore believed that the inhabitants of Gibraltar should not be denied the right to express their views freely and to have those views taken into account.

180. The representative of the Union of Soviet Socialist Republics took note of the Spanish representative's statement that the Spanish Government had withdrawn its proposal of 18 May 1966.

181. In his view, the demilitarization of Gibraltar depended not on Spain but on the United Kingdom, and so long as it had not been effected, the will of the people could not be freely manifested; a people in chains could not express its will.

182. The representative of Spain, returning to the question of permission for non-residents to stay overnight in Gibraltar, pointed out that permission was given only to domestic servants and to nuns working in hospitals and not to Spanish workers. Since the Immigration and Alien Ordinance had been passed in 1845, Spanish workers had been unable to reside permanently or stay in Gibraltar which, but for that fact, would have a typically Spanish population like the rest of the area.

183. The representative of Mali said that, while entirely agreeing with the United Kingdom representative's arguments concerning decolonization and the right of self-determination, he wished to state his delegation's position on certain points.

184. In the first place, while the United Kingdom might justifiably pride itself on having contributed to the liberation and decolonization of a large percentage of the peoples of States Members of the United Nations, the fact remained that, in doing so, it had merely given those people their due and rectified a state of affairs that was incompatible with the normal course of history.

185. Decolonization was an ineluctable process, in keeping with a new situation in which world problems and power relationships had to be viewed in the light of changed conditions. There were two possible attitudes: to withstand the tide

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f history, as some countries, like South Africa and Rhodesia, were still doing, r to go along with history, as many others had done.

86. His delegation had not accused the United Kingdom of seeking to cling to its olonial positions. As the result of the question raised by the representative f Uruguay, his delegation had simply been led to consider certain historical actors and to reflect on the strategic importance of the Mediterranean - known s Mare Nostrum at the time of the Romans - which had served as a justification or many conquests and military occupations. That consideration had prompted it o say that Gibraltar and the Suez Canal were the two keys to the control of the editerranean. His delegation had therefore been very disturbed to hear that ritish naval vessels were being fitted out there a few days before the outbreak f hostilities.

87. The representative of the United Kingdom said that he greatly appreciated he spirit in which the representative of Mali had spoken, but pointed out that t was not correct to say that the main concern of the United Kingdom was to aintain its position in Gibraltar. If the International Court of Justice found he United Kingdom's claim to be legally unsound, the United Kingdom would accept ts judgement.

88. Furthermore, if the inhabitants of the Territory wished to be associated th Spain, immediate action would be taken to give effect to their wish.

89. The United Kingdom Government felt an absolute obligation to the people with om it was associated. It believed that it had an obligation to consult them and take their wishes into account. The circumstances of Gibraltar were certainly ique. But neither the Special Committee nor any other United Nations committee council could ever say that the inhabitants of any territory, whatever the rcumstances, had not the right to be heard before decisions were taken ncerning them.

90. The representative of Iraq, introducing a revised text (A/AC.109/L.424/Rev.1) the draft resolution submitted by Chile, Iraq and Uruguay, with the addition Syria as a fourth co-sponsor (A/AC.109/L.424/Rev.1/Add.1) said that the sponsors d taken the suggestions of certain delegations into account and believed that e new text would be generally acceptable, since it contained no condemnation d asked for nothing that had not already been approved by the overwhelming

majority of Member States. They trusted that the Spanish delegation would be able to accept the text and felt that it was now for the United Kingdom to show goodwill.

191. The draft resolution aimed only at the implementation of the existing resolutions and should therefore be readily accepted by the administering Power and unanimously adopted by the Committee.

192. The representative of the United Kingdom said that he opposed in the strongest terms the wholly partisan draft resolution set out in document A/AC.109/L.424/Rev.1 and Rev.1/Add.1. In purporting to deal with territorial claims, it exceeded and offended the mandate of the Special Committee. With regard to the referendum, it contravened the General Assembly resolution which required that the interests of the people should be taken into account. The revised draft reinforced his argument that no final decisions should be taken at the present time. It would be a grave departure from United Nations traditions and the provisions of Chapter XI of the Charter, and from the principles of elementary justice, to deny a hearing to the people principally concerned. Their liberties should not be denied or betrayed but respected and protected. He accordingly urged that judgement should be reserved and impartiality maintained until the people of Gibraltar had been able freely to express their own views.

193. The representative of Afghanistan said that the interest of the inhabitants of Gibraltar demanded that the Special Committee should base its decision on resolution 2231 (XXI), in which the General Assembly had taken the view that under the prevailing circumstances the continuation of negotiations between the administering Power and Spain was the most effective means of achieving a workable solution to the problem of Gibraltar. No matter how great the difficulties, the Government of Spain and the Government of the United Kingdom should try to resume their negotiations in order to expedite the decolonization of the Non-Self-Governing Territory of Gibraltar. Since the revised version of the draft resolution (A/AC.109/L.424/Rev.1 and Add.1) reflected more accurately the aims and purposes of General Assembly resolution 2231 (XXI), it had his delegation's general approval.

194. Nevertheless, he believed that the sponsors might be well advised to alter operative paragraph 2 to read: "Declares that the convening by the administering Power of the proposed referendum has not been envisaged by resolution 2231 (XXI)".

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that way the paragraph would make a statement of fact instead of taking a ative approach to the holding of a referendum. A referendum held in conditions justice and equity was the most effective means of ascertaining the will of people living under colonial domination. In a United Nations text the use of concept of referendum as it was at present intended in operative paragraph 2 the four-Power draft resolution should be avoided. The General Assembly had ed for negotiations between Spain and the United Kingdom. It was difficult anticipate the results of those negotiations. If the holding of a referendum the outcome, reached with the agreement of the Government of Spain, the ision should be respected.

. For those various reasons he would vote in favour of the four-Power draft olution but would abstain on operative paragraph 2 if it was put to the vote arately. He would abstain on the draft resolution (A/AC.109/L.423) submitted the United Kingdom.

. The representative of Syria believed that the criticisms levelled against the sed draft resolution (A/AC.109/L.424/Rev.1 and Add.1), of which his delegation a sponsor, had no justification. Firstly, by conceding that the question of raltar was a colonial question, the United Kingdom itself recognized that it within the competence of the Special Committee. Thus, the Special Committee ld not be reproached for dealing with the question. Secondly, operative agraph 3 of the revised draft resolution provided expressly for safeguarding interests of the inhabitants. Thirdly, as the representative of Afghanistan implied, the holding of a referendum was a unilateral step outside the ess of neogitations stipulated so clearly in General Assembly resolution (XXI).

. The representative of Sierra Leone said that the two main issues raised ng the Special Committee's discussions on the question of Gibraltar had related, t, to General Assembly resolution 2231 (XXI), operative paragraph 2, and, ndly, to paragraph 6 of the Declaration contained in General Assembly lution 1514 (XV).

His delegation had sponsored the amendment which had led to the inclusion esolution 2231 (XXI), paragraph 2, of the words "taking into account the rests of the people of the Territory" because it believed that the question ibraltar could not be simply a matter for negotiation between the United

Kingdom and Spain. The interests of the people of any Territory could certainly be ascertained by consultation in the form of a referendum; in the case of Gibraltar, the question was whether the administering Power should have consulted Spain first. It had been stated that Spain had been invited to participate in the referendum and had rejected the opportunity to do so. Thus, the issue appeared to be one of interpretation by the two Powers involved. In any event, his delegation could not support the wording used in paragraph 2 of the joint draft resolution (A/AC.109/L.424/Rev.1 and Add.1).

199. With regard to paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, his delegation considered that that provision, like General Assembly resolution 1514 (XV) as a whole, was directed specifically at Non-Self-Governing Territories; consequently, Spain's claim of disruption of its territorial integrity was not relevant and could not be discussed by the Committee, which was competent to discuss only colonial questions. If Gibraltar was a colonial Territory, the Committee was competent to discuss it, but it must treat it entirely as a colonial question. He could not, therefore, support the fifth preambular paragraph of the joint draft resolution.

200. His delegation could support the other paragraphs of that draft resolution; it naturally regretted that interruption of the negotiations between the United Kingdom and Spain and hoped that those two Powers would resume negotiations in order to determine how to solve the problem. However, it could not support the draft resolution as a whole and would abstain from voting on it.

201. His delegation also had difficulties with regard to the United Kingdom draft resolution (A/AC.109/L.423). While it could not reject the idea of a referendum, it questioned the way in which the referendum was to be carried out. However, it felt that the Committee was not yet in a position to pronounce itself on the Territory. Since the referendum was to be held on 10 September and the Committee envisaged closing its session by 15 September, it was unlikely that the full report envisaged would be available before the end of the current session. Consequently, he could not support that draft resolution and would abstain from voting on it.

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202. The representative of the United Republic of Tanzania said that, while his delegation supported the joint draft resolution (A/AC.109/L.424/Rev.1 and Add.1) in principle, it had certain reservations, particularly with regard to the fifth preambular paragraph. Its interpretation of paragraph 6 of the Declaration differed substantially from that given by the sponsors of the draft resolution, so far as its applicability to Gibraltar was concerned. In his delegation's view, paragraph 6 was applicable only to colonial Territories, and to link it with the question of the sovereignty of independent States would be bound to have far-reaching consequences. While his delegation had hoped that operative paragraph 3 of the draft resolution could be improved, it would not press its objections and would support the draft resolution as a whole, subject to its reservations on the fifth preambular paragraph.

203. His delegation could not agree with the purpose of the United Kingdom draft resolution (A/AC.109/L.423), since it involved tactics far removed from the co-operation for which the Committee had repeatedly called. Moreover, the Committee had already described the proposed referendum as "untimely". His delegation would prefer to abide by the spirit of General Assembly resolution 2231 (XXI).

204. The representative of Australia said that there were three points in the joint draft resolution (A/AC.109/L.424/Rev.1 and Add.1) which his delegation could not accept. First, since his delegation understood paragraph 6 of the Declaration to apply solely to the disruption of dependent Territories, it could hardly be taken to apply to Gibraltar, and the fifth preambular paragraph was therefore out of place in a resolution on that Territory. Secondly, with regard to operative paragraph 2, his delegation could not agree that the holding of the referendum would contradict the provisions of General Assembly resolution 2231 (XXI); it seemed a very sound idea to hold a referendum in order to ascertain the wishes of the people of Gibraltar at the present stage. Finally, his delegation felt that the words "safeguarding the interests of the population", which represented the essence of the matter, were not given sufficient emphasis in operative paragraph 3.

205. His delegation could not, therefore, support the joint draft resolution and would vote against it. In the belief that the referendum was one stage, and a necessary stage, in the process of decolonization, it would vote for the United Kingdom draft resolution (A/AC.109/L.423).

206. The representative of Mali said that his delegation would have to vote again the United Kingdom draft resolution (A/AC.109/L.423), the purpose of which was simply to take the question of Gibraltar out of the Special Committee's hands. It was no accident that the draft resolution made no reference to General Assembl resolution 1514 (XV), the charter of decolonization; that omission was evidence of the United Kingdom's desire to divest the problem of its colonial nature. Moreover, the United Kingdom text contained nothing positive which would promote a solution. To express regret that no progress had so far been made would be tantamount to an admission of failure, since it would emphasize that the negotiations recommended in General Assembly resolution 2231 (XXI) had not resulti in an agreement. Nor was it proper for the Committee to "note" the declared intention of the administering Power to consult the people, since many members o: the Committee had criticized that intention; it would be more appropriate for th Committee to express its disapproval of the administering Power's intention. Wh: the Committee did not oppose consultations - quite the reverse - everything depended on how they were carried out. With regard to the seventh preambular paragraph, it was precisely because the Committee had heard the views expressed concerning the referendum and other questions relating to Gibraltar that it must call on the administering Power to continue its negotiations, as envisaged in General Assembly resolution 2231 (XXI), and not to embark on a course of action which the Committee could not fully endorse. The last preambular paragraph - th key paragraph of the draft resolution - was particularly dangerous, since it implied that General Assembly resolution 2231 (XXI) had called for a report on t referendum, whereas in fact it had not even mentioned the possibility of a referendum. With regard to the operative paragraph, he agreed with the representative of Sierra Leone; it was no accident that the referendum was to be held just before the opening of the twenty-second session of the General Assembl to which the Special Committee must report. The Committee should take much more positive action than was recommended by the United Kingdom.

207. In his delegation's view, the joint draft resolution (A/AC.109/L.424/Rev.1 Add.1) represented the bare minimum that was acceptable, particularly since it overlooked the Committee's responsibility to urge the administering Power to re: from any action which was not endorsed by the Committee. Nevertheless, his delegation would vote in favour of it.

208. The representative of the Union of Soviet Socialist Republics said that his delegation would vote in favour of the joint draft resolution (A/AC.109/L.424/Rev.1 and Add.1), since it provided for negotiations between the Governments of the United Kingdom and Spain with a view to putting an end to the colonial situation in Gibraltar and to safeguarding the interests of the population thereafter. It would vote against the United Kingdom draft resolution (A/AC.109/L.423) because the holding of the referendum would result in the perpetuation of United Kingdom domination in Gibraltar and the maintenance of its military base there.

209. The representative of Bulgaria thanked the sponsors of the joint draft resolution for their efforts to take into account the views of other members. His delegation would support that draft resolution, although it believed that no correct solution to the problem of Gibraltar could be found until the military bases in the Territory were dismantled.

210. With regard to the United Kingdom draft resolution, his delegation had always defended the right of colonial peoples to self-determination and insisted that an administering Power, in conformity with General Assembly resolution 1514 (XV), should enable the people of a dependent Territory to exercise that right freely. However, a referendum organized and conducted under military occupation could have only one result, namely, the perpetuation of the colonial situation in one form or another and the continued presence of military bases in the Territory.

211. At the 500th meeting, the draft resolution sponsored by the United Kingdom (A/AC.109/L.423) was rejected by 10 votes to 3, with 11 abstentions. The revised draft resolution co-sponsored by Chile, Iraq, Syria and Uruguay (A/AC.109/L.424/Rev.1 and Add.1) was adopted by a roll-call vote of 16 to 2 with 6 abstentions, as follows:

In favour:	Afghanistan, Bulgaria, Chile, Iran, Iraq, Italy, Ivory Coast, Mali, Poland, Syria, Tunisia, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia.
Against:	Australia, United Kingdom of Great Britain and Northern Ireland.
Abstaining:	Ethiopia, Finland, India, Madagascar, Sierra Leone, United States of America.

212. The representative of Italy, speaking in explanation of his vote, said that his delegation's position on the question of Gibraltar, which had been made clear by its support of General Assembly resolution 2231 (XXI), was that the best way to solve the dispute was through negotiations between the administering Power and Spain, taking into account the interests of the people of the Territory. The fact that he had voted in favour of the joint draft resolution should not be taken as an unqualified endorsement of a certain interpretation of General Assembly resolution 1514 (XV) which, although worthy of further consideration, was not universally accepted either in the Special Committee or in the General Assembly. Rather, his delegation would emphasize the last preambular paragraph of resolution 2231 (XXI), regretting the occurrence of certain acts which had prejudice the smooth progress of the negotiations. His delegation would have preferred a different formulation for operative paragraph 2 of the resolution which the Committee had adopted, in order to avoid creating obstacles to a resumption of the negotiations between the two Governments. He sincerely hoped that the decolonizatio of Gibraltar would not be a source of contention and controversy, but would help to promote harmony among all the countries in that region.

213. The representative of Tunisia said that his delegation was opposed, not to the holding of a referendum as a means of determining the views of the population, but rather to the manner in which it was being organized by the administering Power. General Assembly resolution 2231 (XXI) had called for negotiations between the United Kingdom and Spain, taking into account the interests of the people of the Territory, and had made no mention of a referendum. His delegation had therefore been unable to support the United Kingdom draft resolution. He hoped that the Special Committee would not recognize the results of the forthcoming referendum as valid and that a solution acceptable to all would be found.

214. The representative of Spain said that his Government fully accepted the results of the vote in the Special Committee. It hoped, in a spirit of co-operation and friendship, to reopen negotiations with the United Kingdom Government immediately with a view to the decolonization of Gibraltar.

215. The text of the resolution (A/AC.109/266) adopted by the Special Committee at its 500th meeting on 1 September 1967 reads as follows:

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The Special Committee,

Having examined the question of Gibraltar,

Having heard the statements of the administering Power and the representative of Spain,

Recalling General Assembly resolution 1514 (XV) of 14 December 1960,

Recalling further General Assembly resolutions 2231 (XXI) of 20 December 1966 and 2070 (XX) of 16 December 1965, and the Consensus adopted on 16 October 1967 7/ by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Considering that any colonial situation which partially or totally disrupts the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations and specifically with paragraph 6 of General Assembly resolution 1514 (XV),

1. Regrets the interruption of the negotiations which were recommended in General Assembly resolutions 2070 (XX) and 2231 (XXI);

2. Declares that the holding by the administering Power of the envisaged referendum would contradict the provisions of resolution 2231 (XXI);

3. Invites the Governments of the United Kingdom of Great Britain and Northern Ireland and Spain to resume without delay the negotiations provided for in General Assembly resolutions 2070 (XX) and 2231 (XXI) with a view to putting an end to the colonial situation in Gibraltar and to safeguarding the interests of the population upon the termination of that colonial situation;

4. Requests the Secretary-General to assist the Governments of the United Kingdom and Spain in the implementation of the present resolution, and to report thereon to the General Assembly at its twenty-second session.

216. By identical letters dated 1 September 1967, the Secretary-General transmitted the text of this resolution to the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of Spain for the attention of their respective Governments.

7/ Official Records of the General Assembly, Nineteenth Session, annex No. 8 (A/5800/Rev.1), chapter X, para. 209.

217. The text of a communication dated 6 September 1967 from the Permanent Representative of the United Kingdom in reply to the Secretary-General's letter of 1 September 1967 is reproduced as annex II.

218. Subsequently, the Permanent Representative of the United Kingdom and the Deputy Permanent Representative of Spain addressed letters to the Secretary-Gene dated 25 October and 30 October respectively, which are reproduced as annexes II and IV.

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Annex 57

Minute dated 14 February 1967 from M.Z. Terry to Mr.Fairclough, "Mauritius: Independence Commitment", FCO 32/268

SECRET 19B

Mr. Fairclough

Mauritius: Independence Commitment

You showed me your minute of today's date about the above in draft and asked me to let you have the "facts and figures" referred to in paragraph 3(i) to (iv).

2. I understand that Mrs. McColl and Mr. Gathercole are producing a note for the U.K. Mission to the U.N. about the effects on the Mauritius economy of the fall in the price of sugar. When completed this should provide the material required under paragraph 3(i). I have myself today prepared a brief on the financial position which will serve the purpose of paragraph 3(ii). As regards paragraph 3(iii) I wonder whether there is not perhaps some confusion. I understand that the future of the Commonwealth Sugar Agreement is being reviewed for reasons which have nothing whatever to do with our possible entry in the Common Market. My understanding is that the review has emerged from the hard thinking which has been going on over the past year or two about our overseas aid commitments: and that the Treasury in particular want the C.S.A. to be dropped because it conceals indirect aid to Australia running into several millions of pounds per annum for which there is no conceivable justification: the idea being that aid given to aid-worthy Commonwealth countries through the C.S.A. should in future be given on a direct Government to Government basis (which would alas! be less effective so far as small colonial territories are concerned). I understand however that it is a deadly secret that the C.S.A. is under review and that this could not be mentioned outside Whitehall circles. As regards (b) of your paragraph 3(iii) I understand that it is the case that if Mauritius were still a colony if and when Britain enters the Common Market it would probably get better treatment for its sugar than if it were already an independent country. In the latter event it seems that it ~~would virtually~~ be excluded from European markets since there is already a sugar surplus within the Common Market. ~~I have however asked~~ Mr. Johnson ~~if he could add anything on this point.~~ has agreed to prepare a note on this point.

3. As regards the question of increased support for the P.M.S.D. (your paragraph 3(iv)) I do not think there are any firm facts and figures which can be produced. It is undoubtedly true that over the past year or so the P.M.S.D. have been making a determined attempt to broaden the basis of their support and to appeal to all communities. As an example the Governor mentioned in his latest monthly report that a leading member of the Muslim community had recently joined the P.M.S.D. and it is to be assumed that he would carry a certain number of Muslim voters with him. Apart from this however it is not possible to give anything as firm as "facts and figures". Most believe that there is little doubt that the P.M.S.D. has succeeded up to a point in winning the support of some proportion of the Indian communities (particularly the younger members and also those with a financial stake in the economy); and apparently large numbers of Indians attend the P.M.S.D. political meetings. It is however essentially a matter of crystal-gazing to try and assess to what extent these efforts will be reflected in the results of the next general election. There are no means of testing public opinion in Mauritius by ~~such means as~~ opinion polls or by-elections. Some argue that the large number of new young voters on the electoral registers is bound to increase the number and the proportion of the votes won by the P.M.S.D. in the next general election. Others claim that whatever the outward signs may be during the pre-electoral period it will be a question of "squaring the ranks" when the

/time comes and

time comes and that the vast majority of the Indians will vote on straight communal lines whatever view they may take of particular election issues (even including independence). In the absence of external tests of the movement of public opinion there are virtually no firm facts and figures which can be adduced: it is essentially a matter of waiting for the P.M.S.D. claims to be put to the test of the general election.

4. In general it seems to me quite impossible for H.M.G. to retract at this juncture the clear and unqualified undertaking given at the 1965 Conference, that we would grant independence if this were asked for by a simple majority vote in the new Assembly returned by the next general election. I am told that it was a Cabinet decision that this undertaking should be given (I am at present trying to trace the relevant Cabinet papers) and that in addition H.M.G.'s decision to come out publicly in favour of independence for Mauritius was part of the deal between our own present Prime Minister and the Premier of Mauritius regarding the detachment of certain Mauritius dependencies for Biot. . I cannot believe that U.K. Ministers generally would be prepared to go back on this decision. To do so would not only cause "a tremendous rumpus in Mauritius" as suggested in paragraph 6 of your minute but would damn us in the eyes of the Commonwealth and indeed of the world as a whole. Since the 1965 undertaking was given we have frequently been asked both at Commonwealth Meetings and at the U.N. what our intentions are in regard to Mauritius: and we have repeatedly stated in unequivocal terms that, in the terms of Mr. Greenwood's pronouncement, we are prepared to grant independence if this is asked for by Mauritius in the manner indicated after a general election. I doubt whether we would even do ourselves much good with the P.M.S.D. by retracting this ~~after~~ repeated undertaking because they (like the rest of the world) would be forced to conclude that our undertakings were not worth the paper they were written on.

5. As regards the particular arguments in paragraph 5 of your minute I would like to say that I cannot see any validity in the argument in sub-paragraph (i). It is a considerable exaggeration and distortion of the facts to say that the registration arrangements were not in accordance with the local law. There probably were omissions from the registers on which the 1959 and 1963 elections were conducted but under a voluntary system of registration it is to be expected that those omitted are the most apathetic and politically indifferent members of the adult community. In Mauritius it would almost certainly be mainly Indians (probably Indian women) who were excluded so that if we were to use this argument we would have to conclude that if all the potential voters had been included on the registers and had exercised their votes the only result would have been to strengthen the support given to Ramgoolam. For the same reason I do not think that there is any validity in the point in your paragraph 5(ii).

6. For the reasons indicated it seems to me quite out of the question that we should at this juncture retract our freely given and unqualified undertaking regarding independence for Mauritius. It is true that circumstances have changed since the undertaking was given and in particular that because of the deteriorating economic and financial position of Mauritius, and the renewed possibility of Britain entering into the Common Market, the interests of Mauritius might be better served by remaining a colony or becoming an Associated State on the West Indian pattern. It is however open to the electorate of Mauritius to judge these issues for themselves. Independence will obviously be the main issue in the forthcoming election and if the P.M.S.D. have any sense they will continue to put across

/to the people

to the people (as they have already been doing) the economic disadvantages of independence. We have however publicly left the choice to the Mauritius electorate. It is really too late in the day for us to assert that the electorate of Mauritius cannot be relied on to judge what is in the best interests of the country and to insist that "mother knows best".

7. For rather different reasons from your own I therefore entirely agree that the only circumstance in which we could possibly suggest that the question of independence should be reconsidered is if the general election results in a very narrow majority (of seats and/or votes) for the Independence Alliance. If the Independence Alliance win by only a narrow majority it seems to me that there is a very strong risk that the P.M.S.D. (if they have any sense) will stage disturbances of some kind. In such a situation, and particularly if there is an actual or threatened breakdown in security, there would be some basis for H.M.G. to suggest that all parties should get round the table again to reconsider the position.

M Terry

(M.Z. Terry)
14 February 1967

Annex 58

United Nations General Assembly, Report of Sub-Committee I: Mauritius, Seychelles and St Helena, UN Doc. A/AC.109/L.398, 17 May 1967

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SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

REPORT OF SUB-COMMITTEE I

MAURITIUS, SEYCHELLES AND ST. HELENA

Rapporteur: Mr. Rafic JOUEJATI (Syria)

CONTENTS

INTRODUCTION

1. The Sub-Committee considered Mauritius, Seychelles and St. Helena at its 35th to 39th meetings held on 5, 13, 18, 20 April and 10 May 1967.

2. The Sub-Committee had before it the working papers prepared by the Secretariat (A/AC.109/L.374 and Corr.1 and 2).

3. In accordance with the procedure agreed upon by the Special Committee, the Chairman invited the representative of the United Kingdom of Great Britain and Northern Ireland to participate in the consideration of the three Territories. Accordingly, the representative of the United Kingdom participated in the 35th to 39th meetings of the Sub-Committee.

CONSIDERATION BY THE SUB-COMMITTEE

A. Statements by members

4. The representative of the United Kingdom gave an account of developments which had occurred since the twenty-first session of the General Assembly in the three Territories under consideration.

5. In Mauritius, constitutional discussions between the United Kingdom and representatives of the different political parties in the Territory had already set the stage for independence. At the end of the constitutional conference of September 1965, Mr. Greenwood, the Secretary of State for the Colonies, had announced that Mauritius would achieve independence if a resolution asking for it was passed by a simple majority of the new Assembly resulting from a general election to be held under a new electoral system. In the course of 1966, a special commission had studied the question of the future electoral system and had recommended that the island should be divided into twenty three-member constituencies and one two-member constituency plus five extra "corrective" seats. In that way, the interests of the main sections of the diversified population of Mauritius would be fairly represented. As those recommendations had given rise to disagreements among the political parties, the number of "corrective" seats had been raised to eight and the arrangements for such seats modified to take account of both party and community considerations, and agreement had been reached between all concerned.

6. Thereafter, in September 1966, the preparation of new electoral registers had been initiated in the presence of a team of Commonwealth observations drawn from India, Malta, Jamaica and Canada. The registers had been published in January 1967 and included one-third more voters than previous lists. The matter now rested with the Government of Mauritius and general elections would be held on the basis of universal adult suffrage at a date still to be set. The Parliamentary Under-Secretary of State for the Colonies had said in the House of Commons in December 1966 that it was desirable that elections should be held at the earliest practicable time. Since the 1965 Constitutional Conference had agreed on a six-month interval between full internal self-government and independence, it would be possible, if a majority elected at the future general elections favoured such a step, for Mauritius to achieve independence six months after the elections. There were differing views among the political parties about the ultimate status of Mauritius, but it was for the people to express its views by democratic means. As stated in paragraph 21 of the Sub-Committee's report for 1966, a team of observers from Commonwealth countries would observe the elections.

7. With regard to the Seychelles, he recalled that following an initiative by the Legislative Council about the Territory's future relationship with the United Kingdom, a constitutional adviser had recommended the establishment of a single Council of twelve to fifteen members with both executive and legislative functions, elected on the basis of universal adult suffrage, as a major step towards full internal self-government. The next elections were to be held in October 1967, and the legal instruments, including the new Constitution, required to implement the various proposals were being prepared.

8. The labour disputes which had occurred in 1966 had been resolved by a general wage increase of 20 per cent. A Government Labour Officer and a Trade Union Officer had also been appointed with the aim of improving labour relations.

9. Substantial progress had been made in St. Helena. On 1 January 1967, the former Advisory Council had been replaced by a Legislative Council, and a system of committees giving the members of the Legislative Council departmental responsibilities had been established; the Executive Council had also been reformed to include the chairmen of those committees in place of the former official members. Elections to the new Legislative Council would take place, as before, on the basis

of universal adult suffrage, not later than 1 January 1968. The Council would consist of twelve elected members out of a total of fourteen, instead of eight out of a total of sixteen as at present.

10. The three Territories under discussion had certain features in common: they all were small, had limited resources and were far from the main lanes of communication. In other ways they were different: Mauritius had 750,000 inhabitants and St. Helena only 4,600. These differences were bound to be reflected in the type of political institutions the Territories developed and also perhaps in their ultimate status. He emphasized that since the last session of the Special Committee, each of the three Territories had made substantial progress towards self-government and a final decision on their eventual status.

11. The representative of the United Republic of Tanzania said that the situation in the Seychelles recalled the arrangement proposed by the United Kingdom for certain Caribbean Territories: the administering Power was contemplating a procedure which violated the legitimate interests of the population and contradicted the various pertinent General Assembly resolutions, including resolution 1514 (XV) of 14 December 1960.

12. Document A/AC.109/L.374 and Corr.1 and 2 showed that the colonial Power was reluctant to implement the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples: a colonial Governor had been sent to the Territory to advise on the future colonial status of the Seychelles and had recommended three possible courses: (a) that the Territory should achieve only nominal independence guaranteed by treaty relations with a suitable Power; (b) some form of free associatcn with the United Kingdom; and (c) some form of close association or integration with the United Kingdom. In the first case, it was clear that the colonial Power was not prepared to withdraw from the Seychelles and to concede unfettered independence. The second course would constitute a direct violation of the inalienable right of the people to achieve the independence it demanded. Finally, integration would be a violation of the territorial integrity of the Seychelles, as stated in General Assembly resolution 2069 (XX) of 16 December 1965.

13. The economic situation in the Seychelles remained gloomy and was accentuated by the Territory's colonial status. In a Territory in which there had been a continued decline in agriculture and industry, it was highly regrettable that most of the arable land was being given to foreign monopolies in the form of concessions. He recalled that that aspect of the situation was to be the subject of special study by the Sub-Committee.

14. In Mauritius, too, there had been hardly any progress. At the preceding session, the Tanzanian delegation had stated that the United Kingdom Government was endeavouring to delay the attainment of independence and circumvent the wishes of the people. By its resolutions 2069 (XX) and 2066 (XX) of 16 December 1965, the General Assembly had called upon the administering Power to dismantle the existing military bases and refrain from establishing new ones in the Territories under its domination. It had also invited that Government to take no action which would dismember the Territories or violate their territorial integrity. The United Kingdom Government had, however, completely ignored the Organization's decisions. On 25 March 1967, The Times of London had reported the measures adopted by the United Kingdom in its new Indian Ocean colony created in November 1965, which was to be used for military purposes by the United Kingdom and United States Governments.

15. He protested against the creation of the new colony, which constituted a violation of the legitimate interests and inalienable rights of the inhabitants. It also showed how the colonial Powers were trying to impede independence by such devices as the concessions they granted to foreign monopolies. It was through such monopolies that the new colony had been set up and military installations established. The dismemberment of a Territory violated the express provisions of operative paragraph 6 of General Assembly resolution 1514 (XV) and those of the United Nations Charter. Moreover, the creation of the new colony and the establishment of military installations also ran counter to the declared wishes of the peace-loving peoples of Africa and Asia. It could be regarded as a hostile act against those peoples, who were in the immediate vicinity of the military installations in the Indian Ocean.

16. It must be recognized that with regard to Mauritius, the Seychelles and St. Helena, the administering Power had maintained a negative attitude and had

refused to implement the resolutions of the General Assembly calling upon it to speed decolonization in accordance with resolution 1514 (XV). Furthermore, the United Kingdom Government was continuing its economic exploitation of the Territories, and more and more foreign monopolies were establishing themselves there, to the detriment of the people's legitimate interests. Lastly, the United Kingdom was openly violating the principles of the Charter and the resolutions of the General Assembly by dismembering Mauritus and the Seychelles and building military installations there with the help of the United States.

17. It was not enough to reaffirm the right of peoples to self-determination and independence; immediate measures should be taken to ensure that those rights were respected. The colonial Power should without delay hold elections on the basis of universal suffrage, transfer all powers to the peoples and restore to them the land and natural resources which it had subjected to extensive exploitation. It must also desist from selling to private companies whole islands detached from the Territories and must instead preserve territorial and national entities. The United Kingdom's political manoeuvres to impose upon the peoples the political status it preferred must be condemned, and it must be called upon to refrain from taking any measures incompatible with the Charter and with the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Sub-Committee should also recommend the sending of a visiting mission, especially to the Seychelles.

18. The representative of Syria said that the administering Power's statements had failed to answer a number of very important questions. Had the United Kingdom implemented without delay the relevant resolutions of the General Assembly in Mauritius, the Seychelles and St. Helena, as it had been called upon to do by resolution 2232 (XXI) of 20 December 1966? If not, why not? The Sub-Committee must also know whether the administering Power had changed its attitude with regard to the sending of a visiting mission and whether it was prepared to co-operate with the Sub-Committee in the matter.

19. The General Assembly had expressed some concern regarding the preservation of the territorial integrity of colonial Territories. Did the administering Power still harbour its intentions, and did it realize that the establishment of military bases ran counter to the resolutions of the General Assembly and could not but create international tension and conflict?

20. The United Kingdom had stressed the poverty of Mauritius, the Seychelles and St. Helena and the inadequacy of their resources. But what was it doing to utilize their hydroelectric potential or to remedy the growing unemployment or the balance-of-payments deficit? Had it endeavoured to diversify the economy of Mauritius, as the Prime Minister of Mauritius had repeatedly asked it to do, or was it adhering to the terms of the Commonwealth Sugar Agreement? It was surprising that the United Kingdom, a technologically advanced country and a great source of capital, should permit the Territories under its administration to suffer from shortages of capital and technical skills, as indicated in the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2).

21. The Mauritius Legislative Assembly had called for an end to the discriminatory practices to which the workers in the sugar industry were being subjected. What measures had been taken to protect those workers? He would like particularly to have full information on the role of the Taxpayers and Producers Association.

22. The Sub-Committee should be better informed concerning the new electoral system in Mauritius and the coming elections. Would they be based on universal suffrage, and when would they take place? It was also desirable to know the role of the parties, to determine the extent to which they genuinely represented the people or, on the contrary, represented special interests. Most important of all, the elected representatives of the people should have adequate powers and the Governor should no longer play an unduly large role.

23. In conclusion, he hoped that the United Kingdom would stop giving the impression of wanting above all to safeguard the privileges of the settlers and to serve strategic interests which were of no concern to the people and that it would display a readiness to help the peoples under its administration to free themselves from discrimination and subjection.

24. The representative of the United Kingdom said that he wished to reply at once to some of the questions asked by the Tanzanian and Syrian representatives and that he would comment on other points later.

25. The Tanzanian representative had said, concerning the three courses envisaged in paragraph 28 of the constitutional adviser's report (nominal independence, "free association" and close association or integration), that they would be imposed on the population of the Seychelles and excluded any real independence.

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Page 3 of the document on the Seychelles, however, contained a statement by the Secretary of State for the Colonies noting that the adviser had wished to consider not final solutions but the progressive establishment of constitutional machinery aimed precisely at permitting the people to decide their ultimate status. The adviser himself stated in paragraph 27 that he had concerned himself with immediate measures. As to the elections in Mauritius, he referred the Syrian representative to paragraphs 20 and 21 of the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2), which indicated, inter alia, that in the view of the United Kingdom Government, it was most desirable that the elections should be held at the earliest practicable time and that neither the United Kingdom Government nor the Government of Mauritius had been responsible for the fact that it had been impossible to keep to the time-table originally planned. The completion of the register of electors should in principle make it possible to hold elections in 1967.

26. He would have to consult his Government concerning the sending of a visiting mission if that was in accordance with the Special Committee's views.

27. The representative of the United Republic of Tanzania said that, according to the United Kingdom representative, the proposals in paragraph 28 of the constitutional adviser's report on the Seychelles were not final. Inasmuch as the people of the Seychelles had expressed a wish to achieve independence rapidly, the solutions outlined in that paragraph could only create confusion and were, in fact, an insult to the people of the Territory. As to the "political inexperience" of the electorate and the candidates, which the adviser noted with regret in paragraph 34, he wondered if it was not attributable to the fact that the United Kingdom was preventing the people from exercising their rights. Moreover, paragraph 47 shows clearly that the "free association" formula was regarded as final.

28. The possible solutions envisaged by the United Kingdom revealed the latter's neo-colonialist intentions. The administering Power had never shown any willingness to implement General Assembly resolution 1514 (XV) and had taken care, in its statement, to make no mention of complete independence.

29. The representative of Syria asked whether the Legislative Assembly to be chosen in the elections which, according to the representative of the administering Power, were to be held in 1967, would really be in a position to decide the future of Mauritius by adopting a constitution and leading the Territory to independence if that was the wish of the population, or whether, on the contrary, it would be a passive body, content to pass minor legislation under the control of the Governor.

30. The representative of the United Kingdom, replying to the Syrian representative, said that the Legislature could lead Mauritius to independence, if the majority of its members so desired, after six months of self-government. The forthcoming elections would therefore be more than a mere formality.

31. The "free association" formula which the Tanzanian representative had criticized could not, in any case, be imposed. It was for the people of the Seychelles, acting through their representatives, to choose their ultimate status. However, it should not be forgotten that the people were divided, some wanting independence, some association, and others integration, and that the Territory's two political parties, the Seychelles Democratic Party (SDP) and the Seychelles People's United Party (SPUP), had different programmes in that regard.

32. The representative of Syria said that the current debate was enabling the Sub-Committee to form a clearer idea of the situation. He asked the United Kingdom representative whether, if most of the representatives opted for independence, Mauritius would become independent in 1968. The forthcoming elections were of the greatest importance, and it seemed advisable that United Nations observers should be present.

33. The representation of the United Kingdom confirmed that, under the present arrangements, not more than six months would elapse between the general election and the attainment of independence, if that was what the newly elected legislature wanted. On this basis independence could take place by 1968, subject to the views expressed by a majority of the Legislature after the general election. The Government of Mauritius had agreed to the presence of Commonwealth observers to verify the electoral registers and supervise the voting procedures. If a formal request were made that the Sub-Committee should also send observers, he would have to consult his Government before replying.

34. The representative of the United Republic of Tanzania observed that the United Kingdom representative had still not stated definitely whether his Government's policy was one which would permit the Seychelles and Mauritius to

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achieve full independence. Study of the documents as well as information available to him indicated that the people wanted full independence at an early date. He also wished to know when the machinery referred to in the documents, the operation of which had already been explained, would be set up. His Government did not wish to be confronted with a fait accompli or to see the administering Power impose a point of view which was at variance with the people's desires. He also noted that the United Kingdom representative had carefully avoided mentioning the dismemberment of Territories, which was a violation of the Charter and of General Assembly resolution 1514 (XV). A specific reply on that point would enable the Sub-Committee to make definite recommendations to the Special Committee and the General Assembly.

35. The representative of Syria said that if the new elections on Mauritius were to be held in 1967, after which there was to be a six-month delay, the island would presumably attain independence in 1968. As to the question of observers, he that the United Kingdom Government would appreciate the need for a United Nations presence during the elections. Like the Tanzanian representative, he hoped that the United Kingdom delegation would clarify the question of the dismemberment of Territories.

36. The representative of the United Kingdom pointed out to the Tanzanian representative that, as the United Kingdom Government's report indicated, it was for the members of the future legislature of the Seychelles, elected by universal suffrage, to consider the Territory's future, and that there had been no decision as to its ultimate status. As to the content of the new constitutional proposals which were to be implemented in Seychelles, all relevant details were given on page 4 and in chapter V of his Government's report on the recommendations of the constitutional adviser, and in chapter V of the adviser's report. The proposed changes would take effect when the general elections were held, i.e., in October 1967 at the latest.

37. The representative of the United Republic of Tanzania said that his delegation would take note of the United Kingdom representative's explanations. The paramount question of sovereign rights had not, however, been clarified. The documents referred to gave no definite indication as to whether the United Kingdom planned to grant complete independence to the Territories in conformity with General Assembly resolution 1514 (XV). On the contrary, it appeared that the proposals in

chapter IV, paragraph 28 (a), (b) and (c), of the United Kingdom Government's report would be implemented and that a solution involving independence would be discarded, as it had in the case of the Caribbean Territories.

38. The representative of the Union of Soviet Socialist Republics said that the discussion of the situation in Mauritius, Seychelles and St. Helena by the Special Committee in 1966 had clearly shown that the administering Power had not yet implemented the provisions of General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions, that the political development of the Territories was proceeding very slowly, that the electoral arrangements devised for Mauritius had been the subject of serious controversy among various groups and political parties and that universal suffrage had still not been introduced in the Seychelles. The Special Committee had also expressed concern at the establishment of the new "British Indian Ocean Territory" and the reports that it would be used as a military base, and had called upon the administering Power to respect the territorial integrity of Mauritius and Seychelles and, in keeping with operative paragraph 12 of General Assembly resolution 2105 (XX) of 20 December 1965, to refrain from using the three Territories for military purposes. It had also called upon the administering Power to recognize the right of the indigenous inhabitants to dispose of the natural resources, and to take measures to diversify the economy, of the Territories. Those conclusions and recommendations had been confirmed by the General Assembly at its twenty-first session. In resolution 2232 (XXI) the General Assembly had, inter alia, urged the administering Power to allow visiting missions to go to the Territories to study the situation and make appropriate recommendations, and had reiterated its earlier declaration that any attempt to disrupt the national unity and territorial integrity of colonial Territories or to establish military bases and installations in them was incompatible with the Charter of the United Nations and with resolution 1514 (XV). In resolution 2189 (XXI) of 13 December 1966 the General Assembly had requested the colonial Powers to dismantle their military bases in colonial Territories and to refrain from establishing new ones.

39. All three Territories were, however, still under United Kingdom domination and United Kingdom Governors still had wide powers: in Mauritius, the Governor still appointed the Premier and most of the ministers, and in the Seychelles and

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St. Helena he presided over both the Executive Council and the Legislative Council. The people of Mauritius had long been asking for independence, but it seemed as if the administering Power still intended to delay granting it by imposing certain conditions such as that the people should first gain experience of managing their own affairs. A study of the new "Proposals for Constitutional Advance" in the Seychelles showed that they were not intended to prepare the people for independence in accordance with General Assembly resolution 1514 (XV), but rather to perpetuate United Kingdom control of the Territory, and that independence was ruled out as a solution. Under the suggested "committee system of government", the Governor, in addition to his general reserved powers, would have direct responsibility for law and order, the public service and external affairs, and it appeared that he would retain the power to appoint the non-elected members of the Legislative Council and to nominate three other members. As the representative of Tanzania had indicated at the previous meeting, the proposed new arrangement would impede the full exercise of the right to self-determination and independence by the population in accordance with resolution 1514 (XV). Of the three possible courses suggested for the Territory, the one recommended was not even "nominal independence", but some form of "free association with the United Kingdom", which indicated that the administering Power did not wish to relinquish control of the Territory. That had been confirmed by the fact that the United Kingdom representative had given no positive reply at the previous meeting to the question of whether it did indeed intend to grant complete independence to the Seychelles. It was thus clear that the administering Power was impeding the political development of the three Territories.

40. As to the economic situation in the Territories, it was still as serious as before, if not worse. They remained a source of primary commodities and cheap labour for the metropolitan country, which prevented them from developing economic relations with other countries. According to document A/AC.109/L.375 and Corr.1 and 2, as much as 73 per cent of Mauritius exports went to the United Kingdom, including most of the sugar produced, and, as the Premier of the Territory had said, progress in the diversification of the Territory's economy had been slow. A similar situation prevailed in the Seychelles and St. Helena. All three Territories

depended on a single crop, and that made economic progress very difficult. They also depended increasingly on external aid. After the prolonged domination of foreign capital the people of Mauritius were still without the means of production required to satisfy more than 10 per cent of their needs.

41. The social situation in the three Territories also continued to be distressing. There was chronic unemployment in all three and the Christian Science Monitor of 23 January 1967, described the unemployment problem in Mauritius as "hopeless". The gulf between the planters and the peasants in the Seychelles had even been admitted in the document on the proposals for constitutional advance. Furthermore, there were still no facilities for higher education in the Territories.

42. The explanation for London's constitutional manoeuvres and the delay in granting independence appeared to be that the administering Power intended to turn the Territories into military bases. In spite of the United Kingdom representative's assurances during the twenty-first session of the General Assembly that the "British Indian Ocean Territory" would not be used for military purposes, there was continuing evidence that the United Kingdom and the United States did not wish to abstain from using the new colony as an important link in their "East of Suez" policy, a policy aimed at preserving the position of the British and other foreign monopolies which exploited the natural wealth of the Middle East, southern Africa and other regions. The military installations which the United Kingdom was planning to construct in the "British Indian Ocean Territory" would be a direct threat to the countries of Asia and Africa, as the Cairo Conference of Non-Aligned States had pointed out. The Economist of 14 January 1967 had reported that the immediate aim was to station a mobile striking force in the new Territory. The United States still maintained military personnel to man rocket-tracking stations on Mahé, in the Seychelles, and on Ascension Island, which had gained lamentable notoriety as a base for United States and Belgian intervention in the Congo in 1964. There was also evidence that the United States intended to establish a communications relay station on the island of Diego Garcia.

43. The United States was therefore acting as an accomplice of the United Kingdom in violating the General Assembly resolutions relating to the Territories. The Sub-Committee must condemn the militarist activity of the imperialist Powers, which was delaying independence, and which was clearly the reason for the United Kingdom's refusal to allow a visiting mission to go to the Territories.

44. He strongly supported the proposals made by the representatives of Syria and Tanzania at the previous meeting. Since the administering Power had failed to respond to the repeated appeals of the General Assembly and the Special Committee to grant immediate independence to Mauritius, the Sub-Committee should ask the Special Committee to recommend the General Assembly to set a time-limit for the granting of independence without any conditions or reservations. In view of the continuing use of Mauritius and Seychelles for military purposes and the creation of the "British Indian Ocean Territory" in violation of General Assembly resolutions 2105 (XX), 2189 (XXI) and 2232 (XXI), the Sub-Committee should recommend that a visiting mission be sent to the Territories to study the situation and make recommendations to the General Assembly at its twenty-second session. Lastly, the administering Power should be asked to inform the Special Committee before the opening of the twenty-second session on how the recommendations of the General Assembly and the Special Committee were being implemented, especially those concerning the immediate exercise of the right to self-determination by the population, the prompt holding of elections on the basis of universal suffrage in order to create representative organs in Seychelles and St. Helena, and the safeguarding of the people's right to dispose of their own resources and create a diversified economy. Such action would help the people of the Territories towards self-determination and independence and would show them that they had the moral support of the United Nations.

45. The representative of Yugoslavia said that, once again, the Sub-Committee must take note of the fact that the administering Power had done very little in the direction of allowing the peoples of the three Territories to decide their future status and form of government freely and democratically. The administering Power had shown that it was still not prepared to implement the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples and of General Assembly resolutions 2066 (XX), 2069 (XX) and 2232 (XXI).

46. Not only had there been no positive changes in the political and constitutional fields but all three Territories were also characterized by a steadily deteriorating economic situation. The Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2) spoke of a downward trend in per capita income and a rise in unemployment in Mauritius and Seychelles. The administering Power issued warnings about the deterioration in the economic and social situation but took no measures to remedy it. The chief reasons for the negative economic trends had been noted by the Sub-Committee on previous occasions: the single-crop economy, the large areas of arable land in the hands of a small number of plantation owners, and the concessions that continued to be granted to foreign monopolies under conditions which disregarded the interests of the Territories.

47. Another problem which was of extreme concern to his delegation was the violation of the territorial integrity of the Territories. The establishment of the "British Indian Ocean Territory" was contrary to the basic principles set forth in General Assembly resolution 1514 (XV) and was an indication of neo-colonialist plans mentioned in the Cairo Declaration of non-aligned countries. On 10 November 1965, the Secretary of State for the Colonies had confirmed in the House of Commons that the new Territory was to be used by the United Kingdom and the United States for the erection of defence facilities. The statement on 16 November 1966 by the Secretary of State for Defence that no plan had been made for the creation of military bases in the Territory had done little to remove the apprehensions regarding the future plans of the two Governments concerned. The fact that the reports concerning military bases had not been categorically denied, especially when it was known that certain military installations were already being constructed, was an indication to his delegation of the existence of plans which might have dangerous consequences for the whole area. According to The Baltimore Sun, of 7 April 1967, a spokesman for the Indian Government had stated that that Government was strongly opposed to the establishment of military bases in the Indian Ocean and would raise the matter at the United Nations. The same paper stated that the United Kingdom, in co-operation with the United States, was planning to build an air strip in the Territory in order to assist in the movement of troops and aircraft from Europe to Asia.

48. The establishment of military bases could only be intended to check the process of decolonization and threaten the independence of African and Asian countries. The argument that the Governments of Mauritius and Seychelles had agreed to the transfer of the islands concerned to the new Territory was without substance because Mauritius and Seychelles were still not independent. The fact that the United Kingdom had been in a hurry to detach the Chagos Archipelago from Mauritius prior to the proclamation of independence spoke for itself.

49. With regard to recent constitutional developments in Mauritius and Seychelles, he could not accept the United Kingdom's contention that measures leading to the transfer of powers to democratically elected representatives of the people were being taken. In Mauritius, elections had once again been postponed. The statement published by the Commonwealth Office on 21 December 1966 was clearly intended to give the impression that responsibility for the delay did not rest with the United Kingdom. Nevertheless, it was his view that the administering Power alone was responsible for delaying the process of self-determination and independence.

50. In Seychelles, the situation was even more disturbing. There, the administering Power was insisting on a longer constitutional process on the pretext that the inhabitants lacked political experience. Sir Colville Deverell's proposals for constitutional advance, contained in the document which had been made available to members by the United Kingdom representative, were inconsistent with the provisions of relevant United Nations resolutions. Sir Colville complained that the political parties were primarily preoccupied with the question of the ultimate status of Seychelles rather than with constitutional evolution, but that was quite understandable. Sir Colville also stated that the question of the Territory's status could not be an immediate issue. Why not? Sir Colville went on to suggest three kinds of ultimate status which he said were the only possible kinds for a small, isolated island such as Seychelles. All three proposals involved some form of association or integration with the United Kingdom. In his delegation's view, the advancing of such suggestions was inadmissible in that it prejudged the people's decisions.

51. The United Kingdom apparently wished it to be believed that the measures proposed would significantly improve the constitutional situation. He could not agree with such a contention. It seemed that, under the new system, the ratio of

elected to appointed members of the Executive and Legislative Councils would be eight to seven. That means little, however, in view of the influence exercised by the Governor in the councils. The administering Power was clearly delaying the transfer of power to the democratically elected representatives of the people.

52. The following conclusions could be drawn with regard to the three Territories: (a) the administering Power had failed to implement the provisions of General Assembly resolution 1514 (XV) and other relevant resolutions; (b) it was endeavouring to delay the transfer of power to elected representatives of the people; (c) it had created a new colony out of islands detached from Mauritius and Seychelles, thus directly violating the principle of territorial integrity; (d) it was putting into effect its plans for the establishment of military bases on the so-called British Indian Ocean Territory; (e) the economic and social situation in the Territories continued to deteriorate and concessions were being granted to foreign monopolies.

53. He believed that the Sub-Committee should, on the basis of these facts, recommend that concrete measures should be taken to guarantee the rights of the peoples of the Territories to self-determination and independence. The sending of a visiting mission should be recommended, particularly to Seychelles, so that the Special Committee would not be faced with the situation it had been confronted with in the case of the British Caribbean islands.

54. The representative of Finland said that, in view of the striking differences between the three Territories under consideration in terms of political development, economic conditions, and the ethnic background and size of population, it was hard to envisage any common pattern for their constitutional advancement. The largest of the Territories, Mauritius, seemed to be well on the road to full independence. Elections were to take place in the relatively near future at a date set by the Government of Mauritius, and if the newly elected Assembly decided in favour of independence, it could be attained after a six months' transitional period. After some regrettable delay, the people of Mauritius would thus be able to express their views regarding the future status of the Territory, and it seemed that, although there were some differences among the political parties, the majority favoured progress to full independence. As it neared independence, Mauritius faced certain

difficult problems. Further action was needed to diversify its economy, and the problems resulting from the rapidly expanding population needed to be tackled, perhaps through an expanded family planning programme.

55. Political development in Seychelles seemed to be proceeding more slowly. There had been little demand for full independence and, in view of the smallness of the Territory in size and population and of its economic situation, some special constitutional arrangement might be called for, perhaps as an interim solution. He noted with satisfaction that elections were soon to be held on the basis of universal adult suffrage and that a new constitution was being prepared. It was important, however, that plans for constitutional advance should not in any way exclude the possibility of full independence. Economic development was a problem also for Seychelles and it was obvious that the Territory needed outside help.

56. Whatever future course might be chosen by the three Territories, it was essential that the choice should rest with the freely elected representatives of the people. It was equally important that the people should retain the right in the future to choose an alternative political status.

57. The representative of the United Kingdom said that the Sub-Committee had heard many familiar assertions from the representatives of the USSR and Yugoslavia, and his delegation had had to reply to them on past occasions. They ranged from the inaccurate to the fantastic. Since the general debate was not yet concluded, however, his delegation would prefer to defer its comments on the various statements which had been made to a later meeting.

58. The representative of the Union of Soviet Socialist Republics said that his delegation had always given close attention to factual material supplied by the administering Power and derived from other sources. If the United Kingdom representative wished, he could produce the sources on which he had based his statement; they consisted mainly of United Kingdom newspapers, such as The Times and The Observer. The United Kingdom representative would find that the Soviet delegation's statements were confirmed by dispatches in such newspapers.

59. The representative of Yugoslavia said that, if his assertions were "familiar", the reason was that the colonial Power had repeatedly postponed the accession of the people to self-determination and independence. As long as that remained the case, his delegation would be obliged to repeat its arguments.

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60. The representative of Tunisia pointed out that, although General Assembly resolution 2066 (XX) concerning Mauritius had invited the administering Power to take steps to implement resolution 1514 (XV), to take no action to violate the territorial integrity of Mauritius and to report to the Special Committee and the General Assembly on the implementation of resolution 2066 (XX), and although General Assembly resolution 2069 (XX) concerning a number of Territories, including Seychelles and St. Helena, had called upon the administering Power to implement the relevant resolutions of the General Assembly and to allow visiting missions to visit the Territories with its full co-operation and assistance, it appeared from the information provided by the United Kingdom representative that no progress along those lines had been made in the three Territories under consideration. He had asserted that the changes which had taken place or which were planned were such as to hasten the implementation of resolution 1514 (XV), but that was open to question since the administering Power had not complied with the General Assembly's request to allow visiting missions to visit the Territories. The colonial period was still too fresh in the minds of many representatives for them to believe everything an administering Power said about the administration of Territories under its control. If the United Kingdom believed that it had fulfilled the obligations imposed on it by the international community, why did it refuse to allow representatives of the United Nations to visit the Territories and ascertain the truth of its statements? It was necessary for the United Kingdom to permit visiting missions if the present deadlock was to be broken. Everything that had been said during the current debate, including the statements of the administering Power, had already been said in previous years. All that the Sub-Committee could do, therefore, was to recommend the adoption of another resolution, reaffirm the inalienable right of the people of the Territories to self-determination and independence and request the administering Power once again to comply with United Nations resolutions. That represented no progress and it was the administering Power which was to blame. If United Nations representatives were allowed to ascertain conditions in the Territories, it would perhaps be easier to achieve a just and equitable solution of their complex problems.

61. The representative of the United Kingdom, replying to questions which had been raised during the debate, said with regard to the problem of unemployment in Mauritius and the need to diversify the country's economy that it was the policy of the Mauritius Government to do everything possible to encourage the establishment of new industries and to that end a number of incentives had been provided in the shape of tariff concessions and financial assistance by the Government Development Bank. A number of new industries had already been established, or were being considered, including factories for the production of soap, margarine and edible oil, textiles and fertilizers, for the manufacture of stationery and watches, and for the processing of synthetic jewels. Discussions had been held with representatives of the United Nations Industrial Development Organization (UNIDO) on strengthening the local machinery for industrial production. In agriculture, the United Nations Special Fund and the United Nations Food and Agriculture Organization (FAO) were conducting a joint survey of land and water resources and were expected to recommend various projects which should lead to the improvement and greater diversification of agricultural production. An Agricultural Marketing Board had been in operation for the preceding three years and the Mauritius Government had just approved a number of new schemes for agricultural co-operative credit. It was clear, therefore, that the Mauritius Government was determined to do everything possible to diversify the economy of the Territory and reduce its dependence on the production of primary commodities.

62. Inevitably, the Mauritius Government, like most other developing countries, had sought, in promoting local industrialization, to attract foreign capital. It was unrealistic to regard such policies as continued concessions to foreign monopolies. His delegation knew of no arrangements for foreign investment in the Territory which were intended to operate on a monopolistic basis or in a manner contrary to the interests of the people of Mauritius.

63. The representative of Syria had referred to allegations of discrimination in the sugar industry and had asked about steps being taken to protect the workers. Conditions of employment in the sugar industry were regulated by wage councils appointed by the Mauritius Ministry of Labour and there was no discrimination

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among workers in any form of employment. As to the matter of hydroelectric installations, there were at present eight hydroelectric power stations operated by the Central Electricity Board of Mauritius and a ninth was to be completed by 1969. With regard to the Seychelles Taxpayers and Producers Association, he said that that organization, as indicated in paragraph 64 of document A/AC.109/L.374 and Corr.1 and 2, had for some time ceased to exist.

64. The representative of Finland had invited attention to the problems of a rapidly expanding population and the desirability of an expanded family planning programme. There was now a much wider acceptance among all shades of religious opinion and communities in the Territory of the need for family planning and, with government support, certain voluntary agencies had already made a start.

65. With regard to the so-called dismemberment of Mauritius and Seychelles resulting from the establishment of the British Indian Ocean Territory, as alleged by the representatives of Syria and the United Republic of Tanzania, the new Territory was made up of a number of small scattered islands separated from both Mauritius and Seychelles by many hundreds of miles. The Chagos Archipelago, for instance, although previously administered as part of Mauritius, was geographically much nearer to the Seychelles. For nearly 100 years, all the islands, including Mauritius and Seychelles, had formed a single dependency, and thereafter, beginning about sixty years previously, the islands forming the new British Indian Ocean Territory had been attached either to Mauritius or Seychelles purely as a matter of administrative convenience. They could not be considered as a homogeneous part of either of those Territories in ethnic, geographical, economic or any other terms. The islands had no indigenous population, since they had been uninhabited when originally acquired by the United Kingdom Government and virtually all persons now living there were migrant workers. The administrative rearrangements which had been worked out freely with the Governments and elected representatives of the people of Mauritius and Seychelles and with their full agreement, in no sense, therefore, constituted a breach in the natural territorial and ethnic integrity of those Territories.

66. Some representatives, including the representative of the USSR, had implied that there was a conspiracy to delay independence and impede political development in the Territories in order to turn them into military bases. The clear assurances

given by the United Kingdom Government concerning independence for Mauritius and the information provided on constitutional progress in the Seychelles spoke for themselves. The steady progress towards full self-government and decolonization was irrefutable evidence against such allegations.

67. Some delegations had also made familiar allegations that the United Kingdom Government was planning to establish bases in the British Indian Ocean Territory. The allegations had been based exclusively on press reports, which were often highly speculative, since the role of the Press in the United Kingdom was not restricted to that of a subservient reflection of government policies. Those delegations should ignore such speculative comment and accept the clear statement made by the United Kingdom Secretary of State for Defence on 16 November 1966 that his Government had no programme for creating bases in the British Indian Ocean Territory. Although the United Kingdom Government had announced as long ago as November 1965 that the islands might provide potential sites for defence purposes such as refuelling or communications facilities, no decision had in fact been taken to establish any such facilities. Such possible uses were very far removed from the bogey of military bases threatening the independence of African and Asian countries which some delegations had sought to raise.

68. On the question raised by the representative of Syria concerning a United Nations presence during the forthcoming elections in Mauritius, his delegation would be prepared to seek instructions on any specific request which the Committee might make, but he pointed out that the Banwell Commission's report had recommended that a team of Commonwealth observers should be present during the elections and that that recommendation had been accepted by all political parties in Mauritius.

69. The representative of Syria had also asked about the need to take special account of the interests of the communities in the electoral arrangements in Mauritius. He pointed out that the Territory's population was of several different ethnic origins, and that among the political groupings and parties there were bodies which claimed to represent the Hindu and Moslem communities. Under the previous system, it had been possible for as many as fifteen out of sixty-five members of the Legislature to be nominated by the Governor in order to protect under-represented sections of the community. Since it had been impossible at the

Constitutional Conference in 1965 so reach agreement on an alternative procedure, the Banwell Commission had been appointed to make recommendations which would ensure that the main sections of the population should have an opportunity to secure fair representation of their interests. It was not the United Kingdom Government which had demanded that such special arrangements should be made, but the local political parties and especially the minority communities. Under the new electoral arrangements, there would be eight "best loser" seats out of a total of seventy. Four of those would be reserved for under-represented communities irrespective of party considerations, and the other four were intended to restore the balance of party representation in so far as it had been disturbed by the previous award of four seats on a purely communal basis. The arrangement was essentially a compromise. The United Kingdom Government had throughout not wished to impose any solution and the arrangements now in operation had been generally accepted by all sides. His Government had, however, while paying every regard to local wishes, sought to discourage political parties in the Territory from appealing exclusively to particular communities. Sixty out of the seventy members in the new Legislature would be elected in three-member constituencies in which each voter was obliged to cast his full three votes and the result of such an arrangement should be to minimize communal influences. There had, of course, been universal adult suffrage in Mauritius since 1958.

70. The representative of the United Republic of Tanzania said that he would like to make some preliminary comments on the United Kingdom representative's statement. The United Kingdom representative, in attempting to justify the dismemberment of Mauritius and Seychelles, had spoken of distances of many hundreds of miles, but it might be pointed out that the islands in question were many thousands of miles from the United Kingdom. That fact showed the extent to which the United Kingdom regarded geographical proximity as a prerequisite for the existence of a nation. At any rate, the islands in question had always been treated as part of Mauritius and Seychelles. If the facts were as the United Kingdom presented them, one could only assume that the United Kingdom had been systematically misleading the United Nations in the information it had been submitting. If that was not the case, the United Kingdom must admit that it was now pursuing a policy incompatible with the United Nations Charter as well as contrary to the wishes of the freedom-loving and peace-loving peoples of Africa and Asia.

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71. The United Kingdom representative had said that military bases were not now being built on the Indian Ocean islands, but the Tanzanian delegation would like to hear it stated that the United Kingdom Government did not intend to place any military installations, equipment or personnel on the islands, since any such installations and personnel could only be intended for aggressive purposes. The establishment by the United Kingdom of military installations in the Indian Ocean must be seen as part of the military strategy of imperialism. The installations were undoubtedly intended for use against peoples engaged in the legitimate struggle for liberation. The United Kingdom had refused to use force where it was justified, to oust Ian Smith's régime in Southern Rhodesia, but was using all the military means at its disposal against the struggling peoples of Aden and other areas. He would like to be told whether or not the United Kingdom had any military personnel or installations, including military transportation facilities, on the islands.

72. With regard to the reliability of press reports, the question was whether the United Kingdom Government had denied the reports. The Times of London had reported on 25 March 1967 that the United Kingdom was in the final stages of negotiations to buy three privately owned islands in the area for defence purposes. If the United Kingdom Government did not formally deny such reports, his delegation would assume that they were true.

73. The United Kingdom representative had dwelt at length on the need for the representation of the various communities in Mauritius. The United Kingdom, ever since it had controlled Mauritius, had pursued a systematic policy of isolating one group from another, in accordance with the principle "divide and rule". Now, when the nationalists called for independence, the colonial Power claimed that the people were divided. The electoral system under which each voter would be obliged to cast three votes was one which had been tried in Tanganyika prior to its independence and had since been discarded. Such a system actually amounted to a denial of the right of vote, as he would show in more detail at a subsequent meeting.

74. With regard to Seychelles, the United Kingdom had still not indicated that it would accede to the people's demand for independence. "Decolonization" could mean anything, and the Special Committee had seen how the United Kingdom interpreted that term in the case of six Territories in the Caribbean. He would like to be told that under the policy of the United Kingdom Government the people's demand for independence would be granted.

75. The representative of the United Kingdom, replying to the remarks of the representative of the United Republic of Tanzania, said that that representative had claimed that the islands forming the British Indian Ocean Territory were part of Mauritius and Seychelles, but the only evidence he had adduced was that the islands had formerly been treated as part of Mauritius or of Seychelles for administrative purposes. That was true, but, in his view, irrelevant.

76. He formally repudiated the Tanzanian representative's unsubstantiated charge that the United Kingdom had misled the United Nations in the information it had provided on the Territories under discussion. The United Kingdom had never withheld any information relevant to the Special Committee's work, and had indeed gone much further than was strictly required by criteria of relevance. The Tanzanian representative might disbelieve the statements of official United Kingdom spokesmen if he wished, but his counter-assertions had no basis in fact. The matter referred to in The Times report cited by the Tanzanian representative had been dealt with in a statement by the Secretary of State for Defence, on 12 April 1967, who had said that the freehold of the islands in question, which were part of the British Indian Ocean Territory, had been acquired by the Government in order to ensure that they would be available for any facilities, such as refuelling or communications, which the Government might wish to establish there. The United Kingdom had provided full information on the Territories every year from 1964 onwards. There was little purpose in continually furnishing information if it was to be continually ignored.

77. The representative of the Union of Soviet Socialist Republics said that he would like to comment on a number of matters touched on by the United Kingdom representative. That representative had asserted that the administering Power was making efforts to diversify the economy of the Territories under discussion. It was clear, however, that any such efforts had been inadequate. There was chronic unemployment on the islands, and skilled workers were obliged to emigrate to find work. In a survey carried out by Barclays Bank, it had been stated that the United Kingdom had not been vigorous enough in its efforts to help the people of the Territories to help themselves. Basic goods required to meet the essential needs of the people had to be imported.

78. The United Kingdom representative's claim that his Government's military activities in the area were not impeding the progress of the Territories to independence would not bear examination. Preparation for self-determination must include efforts to build up the economy, and the Secretariat paper (A/AC.109/L.374 and Corr.1 and 2) showed that military activities were impeding economic development. In paragraph 114 (A/AC.109/L.374/Corr.2) it was stated that, from 1965, the major single source of income in St. Helena had been employment in "communication stations" on Ascension Island - i.e., a military base. Five flax mills which had been in operation in 1965 had been closed down, clearly because the labour force had been lured to the bases by advantages offered them and diverted from normal activities essential for economic independence.

79. The administering Power had denied that it was dismembering the Territories of Mauritius and Seychelles. Clearly the United Kingdom was ignoring General Assembly resolution 2232 (XXI), which stated unambiguously that any attempt at the disruption of the territorial integrity of colonial Territories and the establishment of military bases and installations there was incompatible with the purposes and principles of the Charter and of General Assembly resolution 1514 (XV).

80. The representative of the administering Power had cast doubt on the veracity of reports quoted from the United Kingdom Press. He did not think, however, that the United Kingdom delegation could dispute the fact that, on 15 June 1966, the British Prime Minister had indicated that it was his Government's policy to avoid establishing large bases in populated areas and instead to rely on staging posts such as those available in the Indian Ocean, where there was virtually no local population, so that United Kingdom forces could get speedily to where they were needed at minimum cost. That statement spoke for itself.

81. The assertion that the islands in question had no population of their own was questionable. The United Kingdom Secretary of State for the Colonies had stated in 1965 that there were 1,400 people living on the islands. The inhabitants certainly did not wish to see their islands handed over to the United Kingdom for use as military bases.

82. It was asserted that the United Kingdom's military activities were not slowing progress towards independence, and that the local governments had agreed. But the agreement of governments which were not independent could not be considered valid. Under General Assembly resolution 1514 (XV), self-determination must not be subject to any conditions, and no form of pressure must be exercised on the people. Once independent, the new nations could enter into whatever arrangements they wished.

83. The representative of Yugoslavia recalled that his delegation was one of those which had raised the question of the establishment of United Kingdom military bases in the Territories. The United Kingdom representative had once again referred to the statement made on 16 November 1966 by the Secretary of State for Defence that no plan had been made for the creation of military bases in the British Indian Ocean Territory. The Yugoslav delegation did not regard that statement as a categorical denial by the United Kingdom Government, since it left open the possibility of the establishment of such bases in the future. According to the United Kingdom representative, members were basing their views on press reports, which were often highly speculative. He pointed out, however, that when he had said at the Sub-Committee's 36th meeting that the Indian Government was strongly opposed to the establishment of military bases in the Indian Ocean, he had relied on a statement by a spokesman for that Government.

84. He regretted that the United Kingdom representative had not deemed it necessary to discuss the points raised in his statement regarding the preoccupation of the political parties in Seychelles with the question of the ultimate status of the Territory. In his delegation's view, that preoccupation meant that the people of Seychelles were not interested in a prolonged process of constitutional evolution. Furthermore, his delegation considered that the changes in the ratio of elected to appointed members of the Executive and Legislative Councils did not represent a significant improvement in the constitutional situation.

85. The representative of the United Republic of Tanzania, speaking in exercise of his right of reply, said that the United Kingdom representative's second statement had served to confirm what he himself had said earlier. The United Kingdom representative had informed members that his Government had been providing information on the new colony only since 1964. However, the Sub-Committee had been in existence for some time before that year. What the Tanzanian delegation wished

to call into question, however, was not the transmission of information but the type of information transmitted. If the Territory in question had been a United Kingdom colony, why would that country pay £3 million to Mauritius as compensation for the inclusion of certain of its islands in the "British Indian Ocean Territory"? Colonialism under any guise was a crime against humanity and military aggression was even worse.

86. At a previous meeting the United Kingdom Government had been called upon to indicate whether its policy was to lead the Territories to independence. The United Kingdom Government had ignored the demand of the people of Seychelles for unfettered independence. In his delegation's view, it was important that the United Kingdom Government should co-operate with the Sub-Committee and the Special Committee and agree to the sending of a visiting mission to Mauritius and Seychelles. It was essential that that Government should renounce its colonial policy in those Territories.

87. The representative of Tunisia recalled that a recent resolution of the General Assembly had called upon the administering Power to make it possible for the United Nations to send a visiting mission to the Territories under consideration. He stressed that the question of visiting missions was a matter of primary importance and the United Kingdom representative had not given a satisfactory reply in that regard. It was necessary for members to have a clear idea of the United Kingdom Government's position on the possibility of sending a visiting mission to Mauritius and Seychelles for the purpose of ascertaining the situation in those Territories. With regard to Mauritius, the United Kingdom representative had said that a group of observers from the Commonwealth would be invited to be present during the forthcoming elections. But he had said nothing about the Seychelles or St. Helena. In any event, what was of concern to members was the role of the United Nations.

88. The representative of the United Kingdom pointed out that the statement made in Parliament by the Secretary of State for Defence on 16 November 1966 had been in reply to a question concerning the estimated cost of establishing military bases in the British Indian Ocean Territory. The Secretary had said that as no plan had been made for the creation of such bases, he could not give any figure for the cost of such a scheme. The Soviet Union representative had referred to a statement made by the United Kingdom Prime Minister on 16 June 1966. However, a careful reading

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of that statement would not reveal any inconsistency, since the Prime Minister had spoken of the possibility of establishing facilities for refuelling and communications purposes.

89. With regard to the question of population, he had pointed out that there was no indigenous population in the British Indian Ocean Territory and that most of the people living there were migrant workers. The Soviet representative had again claimed that military activities in the area impeded constitutional development. He himself did not think that that view would be shared by the inhabitants of Malta or Singapore. In any event, his Government was not conducting any military activities in any of the Territories under consideration. The United Kingdom Government had provided a grant of £3 million to Mauritius and, in the case of the Seychelles, had undertaken to build an international airfield, which would contribute greatly to the economic development of the Territory. The Soviet Union representative had referred to figures in the Secretariat Working Paper (A/AC.109/L.374/Corr.2) and had claimed that the solution of unemployment in St. Helena was dependent on military activities. The United Kingdom delegation wished to point out that a total of 342 St. Helenians - as against 323 in 1964 - had worked on Ascension Island in 1965 and that of that total, 150 had been employed by British Government Cable and Wireless, Limited and 68 by the Ministry of Public Buildings and Works for the construction of a British Broadcasting Corporation relay station.

90. With regard to the Tanzanian representative's remarks concerning the transmission of information by the United Kingdom delegation, he wished to point out that his delegation had always provided full information on the Territories and that it was his understanding that the Sub-Committee had first begun to consider Mauritius, the Seychelles and St. Helena in 1964. Since then, his delegation had provided information on those Territories to the Sub-Committee and the Fourth Committee in 1965 and 1966.

91. His delegation took note of the comments of the Tunisian representative, and his Government would consider any request made by the Sub-Committee as a whole concerning the sending of visiting missions.

92. The representative of the Union of Soviet Socialist Republics said, with regard to British Government Cable and Wireless, Limited, that its activities were not solely concerned with civilian operations. The United Kingdom newspaper, The Observer, had said that the cable was likely to become the main channel for relaying data back to Cape Kennedy. It was obvious that such data would be of a military nature. With regard to St. Helena and Ascension Island, he noted that the United Kingdom and the Republic of South Africa had recently held negotiations concerning the Simonstown naval base. According to a report in The Times, it had been agreed that the United Kingdom would continue to enjoy the right to fly over South Africa in the event of trouble in the Middle East. It was thus clear that those negotiations had been designed to serve the interests of the United Kingdom and to enable that country to hinder the progress of the peoples of the Middle East towards independence.

93. The representative of the United Republic of Tanzania said it was obvious that the representative of the United Kingdom and he were not speaking the same language. The representative of the United Kingdom had said that his Government had made a grant to Mauritius. Yet, according to paragraph 40 of document A/AC.109/L.374 and Corr.1 and 2, on 20 December 1966, the Parliamentary Under-Secretary of State had said that the United Kingdom had provided Mauritius with financial aid totalling £8.1 million, in addition to the compensation of £3 million paid for the inclusion of certain groups of its islands in the British Indian Ocean Territory. That showed clearly that the United Kingdom had had to pay for those islands.

94. The representative of Yugoslavia said that his delegation continued to hold the view that the statement made by the Secretary of State for Defence did not constitute a denial of any intention on the part of the United Kingdom to establish military bases in the new colony.

95. The representative of Mali noted that, in his initial statement at the 35th meeting, the United Kingdom representative had said that, in Mauritius, constitutional discussions between the United Kingdom and the representatives of the various political parties had already set the stage for independence - thus implying that there was no need for the Sub-Committee to consider whether General Assembly resolution 1514 (XV) was being implemented. That was an over-simplification of the situation. Indeed, if one examined the political and economic situation in

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Mauritius, as in the other two Territories under discussion, one found that resolution 1514 (XV) was not being implemented and that basic United Nations principles were being disregarded. According to those principles, peoples had a right to self-determination and independence, decisions on constitutional changes must be left in the hands of the peoples themselves, territorial integrity must be respected and - a principle which was vital to genuine independence - the right of peoples to sovereignty over their natural resources must be guaranteed. All those principles were being flouted. In addition, military bases were being established in the Territories, despite the General Assembly decision that the establishment of such bases in colonial territories was incompatible with the United Nations Charter and resolution 1514 (XV).

96. The United Kingdom representative had gone on to say that, at the end of the Constitutional Conference held in 1965, the Secretary of State for the Colonies had announced that Mauritius would achieve independence if a resolution asking for it was passed by a simple majority of the Legislative Assembly resulting from a new general election. He found that condition surprising. He would have thought that a constitutional conference would represent the last step before independence; the requirement for new elections constituted a barrier in the path to independence. It was hard for him to conceive of a people deciding against independence, but apparently the United Kingdom hoped to ensure that the complexion of the new Assembly was favourable to it.

97. With regard to the arrangements for the elections he noted that, according to paragraph 18 of the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2) the total electorate was about 340,000, or 48 per cent of the population. Since the rate of population growth was high and the population was predominantly young, the minimum voting age of twenty-one had the effect of excluding a large part of the population, and giving the electorate an unrepresentative character. That illustrated the danger of allowing the United Kingdom to organize the elections to a body which was to vote on the question of independence.

98. Paragraph 16 of the Secretariat paper revealed that a number of seats were to be filled by the "best losers" in the elections. He found such an arrangement extraordinary, since it meant seating people who had been rejected by the electorate and thus reversing the democratic decision of the people.

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99. It was clear from the Secretariat paper that there had been no economic progress in any of the Territories and that no attempt was being made to alter the structure of the economy in order to ensure economic progress in the future. Mauritius depended essentially on the production of sugar and coffee. In view of the world market situation with regard to coffee, with severe fluctuations in prices and low price levels, coffee-producing countries were trying hard to redirect their production. It was clear that coffee provided no basis for economic development, and the situation was similar with regard to sugar. As far as employment was concerned, economic growth was not keeping pace with the rapid rise in population and chronic unemployment and underemployment resulted. No real solution to that problem was yet in sight.

100. The representative of Ethiopia said that very little had been accomplished towards implementing the provisions of relevant General Assembly resolutions in Mauritius, Seychelles and St. Helena. The Special Committee and the General Assembly had repeatedly reaffirmed the right of the people of those Territories to freedom and independence and had invited the administering Power to take effective measures to implement General Assembly resolution 1514 (XV). Yet the Sub-Committee was obliged to take up the question once again. In September 1966, the United Kingdom delegation had informed the Sub-Committee that registration for the purpose of the new elections had been due to begin on 1 September 1966 but, because of Ramadan, the elections could not be held before February 1967; it had added that Mauritius could thus achieve independence during the summer of 1967.

101. At the 35th meeting, however, in reply to a question from the representative of Syria, the United Kingdom representative had said that independence would probably be obtained in 1968. For certain reasons, the elections due to be held in February 1967 had been postponed. She regretted to have to say that her delegation was not satisfied with the reasons given for the delay. The Ethiopian delegation urged the United Kingdom Government to hold the promised elections at an early date. The people of Mauritius had expressed their wish for independence in 1965 at the London Constitutional Conference, but they were still waiting for the day of independence to arrive. Her delegation appealed to the administering Power to implement fully the Declaration on the Granting of Independence to Colonial Countries and People.

102. With regard to Seychelles and St. Helena, developments were still very slow; hardly any progress had been made in either the political, economic or social situation. As could be seen from Sir Colville Deverell's report, the situation in Seychelles remained serious. Sir Colville had expressed the opinion that, in view of the political inexperience of the people, constitutional evolution should proceed "with reasonable deliberation", and had complained that the preoccupation of the political parties with the question of the ultimate status of Seychelles was distracting attention from the more immediate matter of the next steps along the path of constitutional evolution. Whatever Sir Colville's views on the people's preoccupation with the question of the Territory's ultimate status might be, her conclusion was that the people of Seychelles were anxiously awaiting full independence. She would therefore like to see the administering Power comply with the people's wishes on the basis of General Assembly resolution 1514 (XV) and other relevant resolutions.

103. As to economic conditions, Seychelles had been unable to balance its budget without external aid since 1958, unemployment was increasing, the rate of population growth was rising and agricultural production remained static. That was a sad situation in a country soon to become independent, and her delegation urged the United Kingdom Government to take immediate steps to help Seychelles cope with its economic and social problems.

104. She had also noted that very little progress had been made in St. Helena in the economic, social and political fields. Her delegation appealed to the administering Power to implement resolution 1514 (XV) and other relevant General Assembly resolutions in respect of St. Helena. Most particularly, as far as all three Territories were concerned, it recommended that the administering Power should do its utmost to solve the educational, social and economic problems with which they were faced.

105. The representative of Syria, referring to the answers given to his questions by the representative of the United Kingdom, thought he was justified in asking what was the potential economic wealth of the Territories and to what extent that potential had been realized for the benefit of the population. There were indications that Mauritius had considerable potential in hydroelectric power, yet,

according to the representative of the administering Power, there were only eight hydroelectric stations now in operation and a ninth under construction. He would be interested to know what the production was in kilowatts, to what use it was put and whether it was helping to raise the economic standard of the population.

106. The representative of the administrative Power had indicated that unemployment was decreasing, but he wondered why there was any unemployment at all in a place which was apparently so rich in natural resources and when a relatively extensive economic development project might absorb all available manpower, and even require more. The United Kingdom had both the capital and technical knowledge for such a project.

107. The representative of the United Kingdom had dwelt on the benign nature of the strategic installations on the islands, claiming that they were only refuelling stations. He wondered whether they had been constructed on Mauritian land with the express free consent of the people. If not, were they not impeding self-determination and independence?

108. He welcomed the assurance given that there was no discrimination in the sugar or other industries, but asked what were the salary scales for Europeans and indigenous employees and whether the latter had access to managerial positions.

109. He urged the administering Power to give replies that provided a comprehensive picture of the islands under its administration, and not merely partial answers. What was important was that the people should freely exercise their right to self-determination, that there should be social, economic and political progress and that the sovereignty of the people and the territorial integrity of their land should be respected. The Sub-Committee should not base its conclusions on the opinion of the administering Power as to what was reasonable.

110. The representative of the United Kingdom, replying to the comments made by the representative of Mali concerning the delay in granting independence to Mauritius following the 1965 Constitutional Conference and the requirement that a new Legislature should approve a request for independence, referred him to the report of that Conference, which had made it very clear that there had by no means been agreement as to whether the issue of independence had been fully considered at

previous general elections and that it had been decided by the parties represented at the Conference that steps should be taken to review the electoral arrangements before new elections were held. Two points of view had been expressed: one had been that there was no need to consult the people regarding the future status of Mauritius since their desire for independence had been demonstrated by their support in three general elections for the parties favouring independence, but that it would be appropriate to hold general elections before independence so that the newly elected Government could lead the country into independence; the opposing argument advanced had been that the question of independence had not been a prominent issue in previous general elections and it was therefore doubtful whether the voters really desired it.

111. Those had been the views not of the United Kingdom Government, but of the parties represented at the Conference. Agreement had therefore been reached on the procedure he had described and, if a majority of the newly elected Legislature so decided, independence could be granted within a period of six months. The reasons why the approval of a majority in the Legislature was required were perfectly clear to anyone familiar with democratic procedures. As he had made clear in earlier statements, the delay in holding general elections had been caused by the process of reviewing the electoral system and the initiative now lay with the Government of Mauritius. In December 1966, the United Kingdom Secretary of State for the Colonies, after discussions with the Prime Minister of Mauritius, had expressed the hope that the latter would share his wish for early elections and the Prime Minister of Mauritius had confirmed that he wished elections to be held in 1967. The United Kingdom could do no more; the initiative for holding elections lay with the Mauritians themselves.

112. On the question of the voting age, which had also been raised by the representative of Mali, the franchise arrangements had been reviewed at the 1965 Constitutional Conference and the leaders of the parties represented had agreed to leave it unchanged. It had therefore been the decision of the Mauritian representatives themselves. There was, moreover, nothing unusual in a minimum voting age of 21; that was the case in many countries.

113. With reference to the salary scale in the sugar industry, he assured the representative of Syria that no sections of the population of Mauritius could be regarded as indigenous in the sense valid in other parts of the world. No distinction was made in the sugar industry between the Europeans and other sections of the population.

114. He repeated that no refuelling facilities had so far been constructed in the British Indian Ocean Territory and no decision had yet been taken to do so.

115. The representative of Mali said that he had been surprised by the United Kingdom representative's answer to his question concerning the delay in granting independence. In paragraph 20 of document A/AC.109/L.374 and Corr.1 and 2 it was stated that neither the United Kingdom Government nor the Government of Mauritius could avoid the subsequent delays. Internal political difficulties alone could not be the cause for the delay; one cause appeared to be the requirement that a newly elected Legislature should first approve a resolution asking for independence. He believed that after the 1965 Constitutional Conference the path to independence had been wide open. There was some doubt in his mind as to the United Kingdom's willingness to move towards the emancipation of the Territory.

116. On the question of the minimum voting age, it should be recognized that the population of Mauritius was a somewhat special case because of the age pyramid and the rapid growth of population. To give the franchise only to those over the age of twenty-one would favour the population of mixed and French descent who mainly supported the Parti Mauricien Social Démocrate (PMSD), which was in favour of preserving the links with the administering Power. That indicated what the outcome of the proposed popular consultation would probably be. In many countries the minimum voting age was eighteen. If that were adopted in Mauritius, 75 per cent of the population, instead of 48 per cent, would be entitled to vote and the majority would then consist of young people who did not belong to the land-owning class. The situation presented complex problems which should be studied carefully since the future of a nation was at stake.

117. He was deeply concerned over the strict dependence of Mauritius on coffee and sugar. A country which was about to become independent should not depend on those two products alone. Mauritius, for instance, was entirely dependent on Madagascar for rice. If something could be done to make the Territory less dependent on the

fluctuating prices for coffee and sugar, the United Kingdom should inform the Sub-Committee. It should also diversify agricultural production so that the Territory, which had a rich soil, could satisfy more of its own needs.

118. The representative of the United Kingdom said that the requirement that a request for independence should first be approved by a majority of the newly elected Legislature of Mauritius was no more than a guarantee of the democratic expression of the wishes of the people. It was true that the PMSD did not support full independence, but he pointed out that that party represented not only those of European or mixed descent but also many of African descent who were resident in the Territory. It was hoped, however, that the new electoral arrangements would cut across such communal or racial considerations.

119. In his statement at the Sub-Committee's 37th meeting, he had mentioned the various efforts being made to promote new industry and diversify the economy of Mauritius. Both the United Kingdom Government and the Government of Mauritius fully realized the need for diversification.

120. The representative of the Union of Soviet Socialist Republics agreed with the representative of Mali that the administering Power should give some thought to lowering the minimum voting age, especially since the population of Mauritius did not have a long life-expectancy. The explanation given by the United Kingdom representative was not convincing. What was good for other countries was not necessarily good for Mauritius. Some countries recognized that people already had opinions by the age of eighteen and were in a position to decide how to vote.

121. He had been glad to hear from the representative of the administering Power that there were at present no plans to establish military bases in the Territories, especially in the new colony. That would have been satisfactory if there had not been reports to the contrary. There was considerable concern in Africa and Asia on that point and there had even been discussion in the United Kingdom Parliament. He understood that the United Kingdom representative in New Delhi had been handed a statement pointing out that military preparations in the Indian Ocean were contrary to the spirit of the United Nations Charter, and the spokesman for the Indian Government, to whose statement the Yugoslav representative had referred, was very well informed about the discussions in the Special Committee, and in the United Nations in general, and he was reported to have expressed the hope that the United Kingdom Government would take those discussions into account

and would give up any plans to establish military bases in the Territories. He still did not consider the United Kingdom statement definitive; but if it was, he welcomed it.

122. The representative of the United Kingdom pointed out that it was the elected representatives of the people of Mauritius themselves who had decided to retain a minimum voting age of twenty-one. What was more important was that in Mauritius the voters had a free choice between various political parties and a free choice of candidates.

123. He had noted the USSR representative's comments concerning India's views. No doubt when the question was discussed at a later stage by the plenary Special Committee the Indian representative would make clear his Government's position on the matter.

B. Conclusions

124. The Sub-Committee notes with regret that the administering Power has still not implemented the provisions of resolution 1514 (XV) and of other relevant resolutions of the General Assembly concerning Mauritius, Seychelles and St. Helena, and is still unduly delaying the achievement of independence by these Territories.

125. The Sub-Committee notes with regret the inadequacy of political progress in these Territories. The administering Power, through the Governor, continues to exercise vast powers, particularly in the constitutional and the legislative fields. In Seychelles, the administering Power is insisting on a longer constitutional process under the pretext that the people of the Territory lack political experience. Moreover, the new "proposals for constitutional advance" do not accelerate but, in fact, delay the transfer of power to democratically elected representatives of the people as provided for in resolution 1514 (XV) of the General Assembly.

126. By creating a new territory, "the British Indian Ocean Territory", composed of islands detached from Mauritius and Seychelles, the administering Power continues to violate the territorial integrity of these Non-Self-Governing Territories and to defy resolutions 2066 (XX) and 2232 (XXI) of the General Assembly.

127. The Sub-Committee notes with concern that, notwithstanding the denials by the administering Power, there is still evidence to indicate that the United Kingdom intends to use portions of these territories for military purposes in collaboration with the Government of the United States of America. The Sub-Committee is of the firm

opinion that such military installations create international tension and arouse the concern of the peoples of Africa and Asia, especially those in the vicinity of the installations.

128. The economic situation in Mauritius, Seychelles and St. Helena remains unsatisfactory. The Territories suffer from shortage of capital and depend entirely on few crops and external aid. Efforts by the administering Power to diversify the economy of the Territories have been inadequate. Concessions to foreign companies continue and the interests of the peoples are not safeguarded.

129. The social situation in the Territories continues to arouse concern. There is a downward trend in per capita income and a rise in unemployment in Mauritius and Seychelles. In Mauritius, the workers in the sugar industry rightly complain of discriminatory practices. There are still no facilities for higher education in the Territories.

C. Recommendations

130. The Sub-Committee recommends that the Special Committee take concrete measures to insure that the right of the peoples of Mauritius, Seychelles and St. Helena to self-determination and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples, is respected by the administering Power.

131. The Special Committee should urge the administering Power to grant the Territories the political status their peoples freely choose. The administering Power should consequently refrain from taking any measure incompatible with the Charter of the United Nations and with the Declaration on the Granting of Independence to Colonial Countries and Peoples.

132. The Special Committee should once again reaffirm that any constitutional changes must be left to the peoples of the Territories themselves, who alone have the right to decide on the form of government they wish to adopt.

133. The administering Power should without delay hold free elections in the Territories on the basis of universal suffrage and transfer all powers to the representative organs elected by the people.

134. The Special Committee should recommend that the General Assembly set a time limit for the granting of independence to Mauritius and accelerate the implementation of resolution 1514 (XV) regarding Seychelles and St. Helena.

Annex 59

Extract from Minutes of 20th Meeting of Defence and Oversea Policy Committee held on 25 May 1967

SECRET

(THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT)

OPD(67) 20th Meeting COPY NO. 75

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

MINUTES of a Meeting held at
10 Downing Street, S.W.1.,
on THURSDAY, 25th MAY 1967 at 9.45 a.m.

PRESENT:

The Rt. Hon. Harold Wilson, MP,
Prime Minister

The Rt. Hon. Michael Stewart, MP,
First Secretary of State and
Secretary of State for
Economic Affairs

The Rt. Hon. James Callaghan, MP,
Chancellor of the Exchequer

The Rt. Hon. Herbert Bowden, MP,
Secretary of State for
Commonwealth Affairs

The Rt. Hon. Denis Healey, MP,
Secretary of State for Defence

The Rt. Hon. Roy Jenkins, MP,
Secretary of State for
the Home Department

THE FOLLOWING WERE ALSO PRESENT:

The Rt. Hon. Douglas Jay, MP,
President of the Board of Trade

The Rt. Hon. The Earl of Longford,
Lord Privy Seal

The Rt. Hon. Arthur Bottomley, MP,
Minister of Overseas Development

The Rt. Hon. George Wigg, MP,
Paymaster-General

The Rt. Hon. Frederick Mulley, MP,
Minister of State for
Foreign Affairs

Mrs. Judith Hart, MP,
Minister of State for
Commonwealth Affairs

Field Marshal Sir Richard Hull,
Chief of the Defence Staff

Air Chief Marshal Sir John Grandy,
Chief of the Air Staff

Vice-Admiral Sir John Bush,
Vice-Chief of the Naval Staff

Lieutenant-General
Sir Desmond Fitzpatrick,
Vice-Chief of the General Staff

SECRETARIAT:

Sir Burke Trend
Mr. P. Rogers
Mr. F.A.K. Harrison
Mr. R.L.L. Facer
Major-General J.H. Gibbon

SECRET

C O N T E N T S:

CONFIDENTIAL

3. BRITISH INDIAN OCEAN TERRITORY (BIOT)

The Committee's consideration of this subject (referred to in a minute by the Secretary of State for Defence to the Foreign Secretary dated 12th May 1967), and the conclusions reached, are recorded separately.

Cabinet Office, S.W.1.

25th May 1967

TOP SECRET

Copy No. 25

CONFIDENTIAL ANNEX

(OPD(67) 20th Meeting, Item 3)

THURSDAY, 25th MAY 1967 at 9.45 a.m.

BRITISH INDIAN OCEAN TERRITORY (BIOT)

THE SECRETARY OF STATE FOR DEFENCE said that when BIOT was set up we had made arrangements to compensate Mauritius and the Seyschelles for the detachment from them of islands to form the new territory up to a total of about £10 million. The United States Government agreed to contribute half the cost of this compensation(up to a maximum of £5 million) and at the time, to avoid embarrassment in Congress, particularly requested us to keep secret the arrangements for their contribution; for this reason it had been arranged that it should take the form of their waiving part of our payments to them in connection with the development of Polaris. Until recently there had been no reason to suspect that difficulties would arise over this secret arrangement, but the United States authorities had now told us that some American scientists had become aware of the United States' financial involvement; for this reason they were now contemplating admitting in public if pressed that while no cash payment had been made they had made a "contribution" to the cost of detachment of the islands. This proposal of the United States Government gave rise to great difficulties because we had made arrangements with the agreement of the Comptroller and Auditor General to avoid drawing Parliament's attention to the transactions and we had maintained a firm line in public that there had been no United States contribution. The Prime Minister had also informed the Premier of Mauritius that this was a matter solely between ourselves and Mauritius, in rebutting his proposal that the United States should help Mauritius and the Seychelles. Mr. Christopher Mayhew MP was also aware of the transaction through his former appointment as Minister of Defence for the Royal Navy. He (the Defence Secretary) had circulated with his minute of 12th May a draft telegram to HM Ambassador at Washington containing instructions to the Ambassador for discussion with the United States Secretary of State, Mr. Dean Rusk, but this would require some modification in the light of a minute from the Commonwealth Secretary dated 24th May.

THE COMMONWEALTH SECRETARY said that at the time when the agreement for the detachment of BIOT was signed in 1965, Mauritian Ministers were unaware of our negotiations with the United States Government for a contribution by them towards the cost of compensation for detachment. They were further told that there was no question of a further contribution to them by the United States Government since this was a matter between ourselves and Mauritius, that the £3 million was the maximum we could afford, and that unless they accepted our proposals we should not proceed with the arrangements for the grant to them of independence. Subsequently the matter had become a party political issue in Mauritius and the Premier had been attacked by the present opposition party for having agreed to the separation of Diego Garcia for inadequate compensation. A critical election which would determine whether or not Mauritius was to become independent was due to be held in August and the question of the alleged inadequacy of compensation for detachment of the Chagos Archipelago would be used by the opposition to attack the Premier's record. We should therefore strongly urge the United States Government that complete secrecy should be maintained and we should not at this stage volunteer any alternative proposal. The Ambassador could be asked to report urgently on United States reactions to the proposition that secrecy should be maintained in all circumstances. If they were not willing to accept this we should then consider further what other courses might be adopted.

THE CHANCELLOR OF THE EXCHEQUER said that the Treasury Officer of Accounts, had obtained the consent of the Comptroller and Auditor General to exclude any reference to the remission of part of a Polaris payment in the relevant Votes submitted to Parliament. In view of the latest report of the United States position however there now seemed little chance of total secrecy being maintained, and the following formula had been evolved by Treasury officials which he put forward for consideration -

"The arrangements made with Mauritius and the Seychelles about BIOT were a matter between Her Majesty's Government and the Governments of those two countries. There was no direct payment by the United States in respect of the costs of those arrangements covering such matters as the purchase of land and resettlement of some local inhabitants. BIOT is, however, intended to serve both British and American purposes and in consideration of the arrangements made by the United Kingdom the United States have made some adjustment in other fields which are more favourable to the United Kingdom than would otherwise have been the case."

In discussion it was recognised that there now seemed to be no prospect of maintaining secrecy regarding the United States contribution. There was general agreement that the formula proposed by the Chancellor of the Exchequer provided a useful basis for an announcement. It was suggested, however, that in the last sentence the words "having regard to further capital construction, the United States have now made ...." might be inserted, to relate the contribution to the proposed construction of facilities on Aldabra.

It was also generally agreed that the British Ambassador in Washington should be instructed to inform the United States Government that if in consequence of a disclosure of their contribution which now appeared to be necessary because of the action which the United States Government had taken it became necessary to make an additional contribution to Mauritius or the Seychelles, we should expect the United States Government to bear the cost.

Summing up the discussion, THE PRIME MINISTER said that the formula suggested by the Chancellor of the Exchequer, subject to the addition of some such words in the last sentence as "having regard to further capital construction", should be further discussed by officials and agreed by the Ministers directly concerned. In discussion with the United States authorities we should seek agreement to a simultaneous announcement by the United States and ourselves on the lines indicated in discussion. The timing of such an announcement, which should preferably be after the elections in Mauritius had been held, would require further consideration. After agreement had been reached on the formula which would be used it would be necessary for the Treasury Officer of Accounts inform the Comptroller and Auditor General. The draft telegram to HM Ambassador at Washington should be revised accordingly, in agreement between the Ministers directly concerned.

The Committee -

(1) Invited the Defence Secretary, in consultation with the Chancellor of the Exchequer, the Commonwealth Secretary and the Minister of State for Foreign Affairs, to consider in the light of the discussion, the appropriate form of a public statement regarding the United States contribution.

(2) Invited the Minister of State for Foreign Affairs, in consultation with the Chancellor of the Exchequer, the Commonwealth Secretary and the Defence Secretary, to revise the draft telegram to HM Ambassador at Washington on the lines agreed in discussion.

Cabinet Office, S.W.1.
25th May 1967

Annex 60

Letter dated 12 July 1967 from C.A. Seller to Sir John Rennie, Governor of Mauritius

CONFIDENTIAL

(60)

[redacted].7/1
Your Ref. MIC/58/21

COMMONWEALTH OFFICE
Dependent Territories Division,
Curtis Green Building,
LONDON, S.W.1.

12 July, 1967.

Will you please refer to correspondence ending with your savingram No. 641 of the 16th November about fishing in the Chagos Archipelago.

2. The enquiry in our telegram No. 305 was related to the undertaking given to Mauritius Ministers in the course of discussions on the separation of Chagos from Mauritius, that we would use our good offices with the U.S. Government to ensure that fishing rights remained available to the Mauritius Government as far as practicable in the Chagos Archipelago. It seems certain that there would have to be restrictions on the extent to which either our own or American defence authorities would agree to fishing rights being retained by the Mauritius Government once defence installations have been developed on any of the islands of the Chagos Archipelago but as we see it, these need not necessarily be such as to deny fishing rights altogether. The best way of dealing with the matter and at the same time fulfilling our Ministers' undertaking to Mauritius Ministers may well be that during the period before defence installations are introduced into any of the islands of the Chagos Archipelago, an attempt should be made to clarify the arrangements which would govern access by fishing vessels once any of the islands of the Archipelago are actually taken for defence use.

3. As we see it a reasonable arrangement might contain the following elements:-

A. That there should be unrestricted access throughout the Archipelago during the period before any of the islands are taken over for defence uses and cleared of population.

B. Once one or more of the islands has been taken over and cleared of population, the following arrangements would apply -

(i) Mauritius fishing vessels would of course have unrestricted access to the high seas within the Archipelago (of which it seems from such maps as we have there must be a considerable amount).

/(ii)

Sir John Rennie, K.C.M.G., O.B.E.,
Government House,
MAURITIUS.

CONFIDENTIAL

(ii) They would likewise have unrestricted access to islands not specifically excluded for defence reasons and also to the territorial waters surrounding them.

(iii) The possibility of limited access for fishing in the waters surrounding those islands excluded for defence use would be considered as and when the situation arises by the British and U.S. Governments, but would of course have to be subject to their overriding defence needs.

Would a proposition on these lines (and we should clearly have to fill in the details in consultation with the Americans) be likely to be acceptable to your Ministers?

4. Two matters to which more thought will have to be given are related questions of territorial waters and fishing limits. These two are not necessarily the same thing. If current U.K. law were extended to the B.I.O.T., the effect would be that the Territory would

(a) adopt a twelve miles fishery limit drawn from base lines in accordance with the 1958 Territorial Sea Convention, granting "habitual fishing rights" between the six and twelve lines to Mauritius and to any other states whose vessels had fished in the area during the preceding ten years, and

(b) retain a three-mile territorial sea limit drawn from the same base lines.

5. It is however possible, as matters stand at present, that the U.K. could declare an exclusive fishing zone up to 9 miles beyond the three-mile belt of territorial sea. This would mean that Her Majesty's Government by exercising exclusive control of the fishing rights in this zone would retain the right to decide who should be permitted to fish in the area. Rights could thus be given e.g. exclusively to fishermen from Mauritius and Seychelles; or e.g. to any other country whose fishermen had operated in the area before; or on any other basis. However we understand that a similar exclusive fishery zone established in the waters of a Commonwealth country is possibly to be challenged in the International Court of Justice. If the Court's decision upheld this challenge the value of such a zone for B.I.O.T. would be greatly reduced and we cannot therefore place too much reliance on this possibility.

6. Your savingram under reference supplied the details we requested at the time, but before entering into further discussions here, we are very much concerned to keep in mind the importance of the fishing grounds to Mauritius, for instance the possible importance of fishing in Chagos as a source of food, in view of the rapidly increasing population. In view of the uncertainty of

/the

[redacted]e position over fishing limites, as described above and of paragraph 4(a) above, it would be convenient to be able to base any special arrangements made for Mauritius (and Seychelles) on habitual or traditional fishing arrangements, provided that no other countries can claim similar use in the past. In these circumstances past and present performance is of considerable importance. We should therefore be grateful for any further information about the present activities of Mauritius companies at Chagos and also of the present activities (or future intentions) of fishing vessels of other countries (e.g. Japan). This will affect our discussion of this matter with the Americans and also be of importance in the context of possible protection of vested Mauritian rights against foreign interlopers.

7. I am sending a copy of this letter to Hugh Norman-Walker and shall be grateful for similar information and for any comments he may wish to make.

(C.A. SELLER)

Annex 61

United Nations General Assembly, Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, Summary Record of the Sixty-Ninth Meeting, 4 August 1967, 10.30 a.m., UN Doc. A/AC.125/SR.69

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
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4 December 1967

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1967 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

SUMMARY RECORD OF THE SIXTY-NINTH MEETING

held at the Palais des Nations, Geneva,
on Friday, 4 August 1967, at 10.30 a.m.

CONTENTS:

GE.67-25289

CONSIDERATION, PURSUANT TO GENERAL ASSEMBLY RESOLUTION 2181 (XXI) OF 12 DECEMBER 1966, OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS (agenda item 6)

A. CONSIDERATION, IN THE LIGHT OF THE DEBATES WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE SEVENTEENTH, EIGHTEENTH, TWENTIETH AND TWENTY-FIRST SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964 AND 1966 SPECIAL COMMITTEES, OF THE FOUR PRINCIPLES LISTED BELOW WITH A VIEW TO COMPLETING THEIR FORMULATION:

...

(c) THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES (A/AC.125/L.40 and Corr.1, A/AC.125/L.44, A/AC.125/L.48) (continued)

Mr. SAHOVIĆ (Yugoslavia) said that a positive decision by the Special Committee on the formulation of the principle under discussion was bound to have a favourable effect on the codification and progressive development of all the seven principles concerning friendly relations and co-operation among States, and on the formation of the new international law based on the United Nations Charter.

Any modern formulation of the principle must stress its legally binding character and its universality; in his delegation's view, it constituted a general rule of contemporary international law.

Bearing in mind the federal character of the Yugoslav constitution, his delegation understood the right of self-determination in the broadest sense and recognized the inalienable right of all peoples to choose their own political, economic and social systems and their international status. Peoples were entitled to claim the right to secede and to fight by all means for their national liberation and the establishment of their own independent States, but they could also express their will by establishing, freely and without outside interference, other types of relationships with the other peoples.

The process of decolonization which had taken place since the San Francisco Conference had given rise to new legal and political ideas which called for a broader formulation of the principle under discussion. Chapters XI, XII and XIII of the Charter had been very valuable in the early years of the United Nations in connexion with the decolonization process, but they had in a certain sense been left behind by subsequent developments. The struggle against colonialism had become an essential feature of international relations in general and was no longer confined to the relationships between the colonial powers and the peoples under their domination. In

formulating the principle under discussion, the Committee should therefore take into account the experience gained in that struggle, the main objectives of which were laid down in the Declaration in General Assembly resolution 1514 (XV). Much could be said on the implementation of that Declaration in the light of the survival of colonialism, which constituted one of the main obstacles to the peaceful development of international relations.

It was also necessary to take into account the decisions on self-determination reached by United Nations organs in connexion with human rights.

The formulation proposed by the Yugoslav and the other non-aligned delegations (A/AC.125/L.48) began with the statement of the general rule that all peoples had the inalienable right to self-determination and complete freedom, and stressed that the ultimate purpose of the principle was to ensure the exercise of full sovereignty and the integrity of their national territory.

Paragraph 2(a) condemned all forms of domination as a violation of international law, and that was the basis of the other sub-paragraphs which concerned the application of the right of self-determination.

Paragraph 2(b) stated the right of self-defence of peoples under colonial domination and their right to receive assistance from other States. Paragraph 2(c) prohibited any action aimed at the disruption of the national unity and territorial integrity of another country, and thus forbade interference by one State in the affairs of another on the pretext of the struggle for liberation; although those provisions were a corollary of the principle of non-intervention, they had their place in the statement of the principle of self-determination. Paragraph 2(d) dealt with the duty of all States to render assistance to the United Nations in the liquidation of colonialism. Lastly, paragraph 2(e) was simply a reflection of the vital role of the struggle against colonialism in contemporary international relations.

Thus the formulation submitted by the non-aligned countries met existing requirements and took into account the general legal framework in which the struggle against colonialism had developed, starting from the provisions of the Charter. It reaffirmed the principle of equal rights and self-determination, laid down in Article 1(2) of the Charter, as a general rule of international law.

The proposal by Czechoslovakia (A/AC.125/L.16) contained ideas that were very close to those put forward by the non-aligned countries, and he therefore urged the Drafting Committee to pay special attention to that proposal.

He had given careful consideration to the proposals submitted by the United States of America in 1966 (A/AC.125/L.32) and the United Kingdom (A/AC.125/L.44) which were very similar in content. He noted, however, that the latter proposal laid considerable stress on the application of the principle of equal rights and self-determination of peoples as a human right. Although the Yugoslav delegation recognized that it was possible to establish a link between human rights and the observance of the right of self-determination, it believed that that approach weakened the legal force of the principle under discussion. That principle was one of the fundamental principles of general international law, as was shown by the fact that the Charter proclaimed it separately from human rights and fundamental freedoms in Article 1(2). It was also mentioned in Article 55 as one of the foundations of peaceful and friendly relations, of which the observance of human rights and fundamental freedoms was only one of the instruments, in the same way as the raising of standards of living and the solution of international economic and social problems.

Hence, it was difficult to see how a violation of the principle of self-determination could be regarded as a denial of fundamental human rights, as suggested in part VI, paragraph 1 of the United Kingdom formulation.

His delegation would not oppose the inclusion of a reference to human rights, provided it was given its subordinate place; it was essential to make it clear that any infringement of the principle under discussion was nothing less than a violation of international law. A provision could perhaps be included to the effect that observance of the right of self-determination was the foundation of human rights and fundamental freedoms, since individuals could only benefit from those rights within the framework of broad national communities formed through self-determination. That was precisely the meaning which should be given to the statement of the principle of self-determination in the first article of each of the two International Covenants on Human Rights.

The proposals made by the United States and the United Kingdom did not explicitly state the inalienable right of all peoples to self-determination, but only the duty of every State to respect the principle under discussion - a duty which was only the corollary of the right of all peoples to self-determination.

Those two proposals, moreover, attempted to restrict the scope of the principle by referring to certain particular situations and territories. It was also strange to see in them a reference to zones of military occupation, a question which had nothing to do with the subject under discussion.

If the intention had been to refer to the Charter, the best course would have been to use its language in general terms, taking into account the interpretation given to its provisions by the practice of the Organization and, particularly, by the General Assembly, which had demonstrated that it was possible to apply the Charter constructively and in a manner calculated to meet the requirements of international life, in particular, the practice of decolonization.

In conclusion, he expressed the hope that the Drafting Committee would soon be able to produce a draft formulation of the principle under discussion, after thorough consideration of the various proposals which had been put forward.

Mr. de la Guardia (Argentina), First Vice-Chairman, took the Chair.

Mr. PECHOTA (Czechoslovakia) said that the irresistible tide of independence, freedom and progress was the most striking historical feature of the age. The principle of equal rights and self-determination of peoples was the moral, political and legal basis of a higher stage in the development of international relations, which compared favourably with the past epochs, when inequality and subjugation were regarded as natural phenomena of international life.

Czechoslovakia had re-established its independence in 1918 after several centuries of foreign domination; its people knew the price of liberty, having been subjected to the horrors of Nazi occupation from 1939 to 1945. Consequently, it could not be indifferent to the struggles of other peoples for freedom and it considered that colonialism and any form of subjugation of peoples were not only incompatible with human dignity, but also calculated to disrupt peaceful relations among nations.

As the USSR representative had said, the great socialist revolution of October 1917 had marked a turning point in world history. Great benefits from that revolution had accrued to many peoples of the world in their struggle for self-determination.

The Charter of the United Nations proclaimed respect for the principle of equal rights and self-determination as a condition for the development of friendly relations among States. The twenty-two years which had elapsed since the adoption of the Charter had witnessed the collapse of the colonial system, but some remnants of it had nevertheless survived. The peoples of such territories as Angola, Mozambique, Zimbabwe and South West Africa were still subjected to open colonial rule, and the ideology and practice of inequality found expression in various forms of neo-colonialism. It was against that political background that his delegation had proposed its formulation of the principle under discussion which had been introduced at the 40th meeting of the Special Committee in 1966.

The duty to respect the principle under discussion constituted an obligation of all States and the Czechoslovak delegation could not accept the idea that self-determination was a purely political concept, as suggested by certain delegations which in 1962 had opposed the inclusion of that principle among those to be considered in the codification and progressive development of the legal principles of friendly relations. Nor could his delegation approve the approach which denied the evolution of the concept of self-determination during the past two decades, and which was adopted in the United Kingdom proposal and in the similar text proposed by the United States delegation in 1966. The general philosophy of those proposals and their silence on certain truly essential elements of the principle bore witness to the basic differences which existed with regard to the legal content of the principle under discussion. The main source of those differences was undoubtedly the fact that certain States did not recognize the right of dependent peoples to self-determination and independence and to the free choice of their own political, economic and social system without outside interference. Contrary to the very essence of law and justice, it was being alleged that the struggle of dependent peoples was not compatible with the standards of law and order.

The United States representative had suggested at the 68th meeting that the Czechoslovak proposal distorted the Charter principle under discussion by limiting its scope to the colonial application. In fact, part VI, paragraph 1 of the Czechoslovak proposal clearly dealt with the right of peoples in general to self-determination, but the United States statement had served to illustrate the crux of the whole problem, which was the standing of the Declaration adopted in resolution 1514(XV) and its bearing on the legal principle of self-determination.

The Czechoslovak delegation regarded that Declaration as the most authoritative pronouncement on the principle under consideration since the adoption of the Charter itself. The Declaration represented a mandatory source for the purposes of the work now in progress. The Committee had a duty to pay due regard to General Assembly resolution 2160(XXI) and other important decisions which expressed the will of the totality or the overwhelming majority of the membership of the United Nations on the subject. His delegation shared the views so ably expressed at the 68th meeting by the Indian delegation regarding resolution 2160(XXI), which should provide guidance on the elements to be included in the formulation of the principle under discussion. That resolution reminded States of the fundamental obligations incumbent upon them under the Charter. In adopting it, the General Assembly had acted fully within its

competence to interpret the rights and obligations arising under the principles of the Charter and had stated certain specific corollaries of those principles. As far as the principle under discussion was concerned, the third and fourth paragraphs of the preamble and operative paragraphs 1(b) and 2(b) were of direct relevance and the Committee should treat them as a clear indication of the direction in which it should proceed with its work, since they were an authoritative pronouncement by the General Assembly.

The Czechoslovak delegation found itself in agreement with the text proposed by the non-aligned delegations which had much in common with its own proposal and therefore called for no substantive comments on its part.

In conclusion, he stressed that the development of the concept of equal rights and self-determination was the most significant example of the vitality of the Charter and its capacity to respond to the changing conditions of international life. The mandate of the Special Committee derived from a sound evaluation of those conditions, and he hoped that when dealing with the principle under discussion the Committee would remain in touch with contemporary realities and carry out its mandate in the manner expected by the General Assembly.

Mr. MILLER (Canada) said that his delegation appreciated the stress placed by previous speakers on the fact that respect for the principle of equal rights and self-determination of peoples was an essential prerequisite for the maintenance of international peace and security, for the development of friendly relations and co-operation among nations and for the promotion of economic, social and cultural progress throughout the world. The importance of the principle was clearly established by its proclamation in Articles 1 and 55 of the Charter and by the guidelines set out for its implementation and application in Chapters XI, XII and XIII of the Charter. For those peoples who had not yet attained full self-government, the principle constituted an objective leading to the assertion of sovereign equality, political self-determination, territorial integrity and, last but not least, freedom from external intervention. Apart from being defined in the Charter, the principle had been extended in scope and content, with particular reference to the emancipation of colonial peoples, by several declarations, resolutions, treaties and the like, many of which had already been mentioned during the debate.

Although it was quite understandable that the main emphasis should still be on the desire and determination of all colonial peoples to be free and equal under the law - a desire which all Canadians appreciated - it was necessary to formulate the

principle as a genuine statement of international law and not to allow it to become subordinated to, or circumscribed by, present events which, by their very nature, were not only diminishing but were characteristically temporary and transitory. An undue preoccupation with the remaining colonial situation, for example, might produce a legal formulation which, subjected to the test of history, would prove to have been far too rigid and inflexible to weather many years of effective application. Moreover, despite the argument that full independence per se was the only correct manner of exercising true and free self-determination, there were many peoples in Non Self-Governing Territories who neither wished nor perhaps were able to assume the responsibilities of independent status and, consequently, would freely determine to enter into an association with another country. The Committee should avoid adopting any definition of self-determination which, directly or indirectly, was open to the interpretation that it meant independence alone.

His delegation considered that the Committee's task was to define the principle in such a way that all its legal components were clearly constituted, with the inclusion, if possible, of some guidance as to the situations to which it was to apply. In other words, because the principle was founded on basic human rights and fundamental freedoms and on justice under the law, it was essential to state clearly by whom those rights should be enjoyed and against whom and under what conditions they could be invoked. Unless that were done, there would be some danger that peoples could be misled into attempting to invoke such rights to justify the dislocation of a State within which various ethnic communities had been successfully cohabiting for a long time. That aspect of the subject was directly related to and governed by the principles of sovereign equality and non-intervention.

While his delegation would not wish the Committee to ignore the General Assembly's declaration on colonialism (resolution 1514 (XV)), which was an important political document, it did not regard that declaration as a mandatory source. There was a balance in the General Assembly's resolution between the declaration that all peoples had the right to self-determination and were accordingly entitled freely to determine their political status and freely to pursue their economic, social and cultural development, and the affirmation that attempts aimed at the partial or total disruption of the national unity and territorial integrity of a country were incompatible with the purposes and principles of the Charter. He hoped the same balance would be maintained in any legal formulation produced by the Committee.

Turning to the specific proposals before the Committee, he said that there was a measure of common ground in them which encouraged his delegation to believe that the Committee should be able to produce a balanced and generally acceptable definition. The Czechoslovak proposal unfortunately produced an unbalanced effect. Paragraph 1, though in the nature of a general statement, began with the words; "All peoples have the right to self-determination ...", an expression which, without more precise definition as to its application, could create considerable practical problems. The following paragraphs accented colonialism and racial discrimination, promoted wars of liberation and made no obvious attempt to take into account dependent territories which were administered in accordance with the Charter. It even went so far as to state unequivocally that "nothing in the entire declaration on sovereign principles shall be construed as affecting the right of peoples to eliminate colonial domination by whatever means for their liberation, independence and free development", thus, apparently, overriding important principles such as the prohibition of the threat or use of force, the duty not to intervene in matters within the domestic jurisdiction of any State and the peaceful settlement of disputes.

The text proposed by the non-aligned countries, which was based very largely on the earlier text (A/AC.125/L.31), suffered from a similar imbalance. It did, however, appear to define the conditions under which the principle was to apply. His delegation had been particularly pleased to note that paragraph 2 (c) stipulated that each State should refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any country. That provision helped, in a small way, to maintain the balance found in General Assembly resolution 1514 (XV).

The text submitted by the United Kingdom delegation had the distinct virtue of beginning with the statement "Every State has the duty to respect the principle ..." which was in line with what the Committee was attempting to do, namely to draw up a code of conduct for States based on certain principles contained in the Charter. It was also clear from the first paragraph, which formed the basic statement of the first paragraph, which formed the basic statement of the principle, that the principle was to have universal application. The language used in paragraph 2 seemed to represent a valid and progressive attempt to give legal effect to that part of General Assembly resolution 1514 (XV) which dealt with self-determination and, like the draft of the non-aligned countries, it carefully maintained the balance of that resolution. Paragraph 3 correctly stressed self-government through the free expression or choice of the people, which accurately reflected the aims and purposes of the relevant Chapters of the Charter on Non-Self-Governing Territories. It also emphasized that

self-government, or self-determination, could take forms other than independence. Paragraph 4 made it abundantly clear that the presence of an effectively functioning government, representative of all distinct peoples in a territory, satisfied that principle in the case of a sovereign independent State. The Canadian delegation supported the United Kingdom proposal and hoped that the Drafting Committee would give it the serious consideration it deserved.

Mr. VIRALLY (France) expressed the hope that the Committee would be able to agree on a formulation of the important principle under discussion, or at least achieve substantial progress in bridging the gap between the various views on the subject; the French delegation would make its contribution to the Committee's efforts in that direction.

The French Revolution had been the first in Europe to proclaim the right of self-determination of peoples. From the beginning, recognition of the equality of rights and self-determination of peoples had been the inevitable and the logical outcome of the recognition of human rights, from which it was inseparable. Without political freedom, civil rights could not be fully respected and the equality of all men before the law could not be assured unless the nations to which they belonged were also recognized as equal.

It followed that the right of self-determination of peoples had the same universal character as human rights. Any attempt to confine the benefit of self-determination to certain peoples or to certain historical situations would falsify the principle and render it meaningless; it would introduce an element of discrimination among peoples which, in the end, would be discrimination among men, in defiance of the Charter of the United Nations.

For a long time the right of self-determination had only been recognized in the form of a political principle - the principle of nationality - and it had not been possible to translate that principle into a rule of positive international law. There were undoubtedly historical, political and even sociological explanations for that situation, but there could be no doubt that the delay had been largely due to an inherent difficulty connected with the legal formulation of the rights in question. As the representative of Ghana had pointed out, the main difficulty resided in the determination of the beneficiary of the right - that was to say, in the definition of the term "people".

During the nineteenth century, it was the term "nation" which had prevailed and, although that concept was much narrower, it had not been possible to reach universal agreement on a definition. The difficulty had increased with the much more vague and imprecise notion of "people". In certain cases, a people was clearly identifiable by means of objective factors, but that was far from being always the case. Moreover, even where the identity was well established, historical circumstances could intimately bind two distinct communities together. In such cases, the rights of one community, whether it was a majority or a minority, should not be so exercised as to destroy the rights of the other or to lead to the formation of entities that were not viable as separate units.

The absence of a general criterion for the identification of a people and the uncertainties which arose meant that self-determination often became a tool to undermine the territorial integrity and political unity of States; peoples were thus used, more often than not against their genuine interests, to further designs of aggression and subversion for the benefit of foreign interests. No State - old or new - could hope to escape that threat, since the population was always of a composite character, even in those States which, ethnically and historically, had achieved the greatest measure of unification; any State could be the object of envy or attempts at disruption.

At the same time, any unduly narrow or restrictive definition of the right of self-determination would have the effect of depriving of that right certain groups which were endowed with strong individual characteristics and a genuine desire for autonomy, but the identity of which was not based on differences of race, language or religion.

Those difficulties, which had not yet been fully surmounted, no doubt explained the fact that it was not until 1945, with the adoption of the United Nations Charter, that the right of self-determination had found its place in a legal instrument. It was significant that its formulation in the Charter had been so complex and so cautious that it had given rise to a variety of different interpretations. It was open to question whether the Charter had given recognition to a genuine right in favour of peoples, or whether it had merely laid down an objective for the United Nations. All things considered, and particularly taking into account State practice since 1945, he believed that the first interpretation should prevail.

As far as the beneficiary of the right was concerned, the French delegation regarded as unduly narrow the view held by Kelsen and certain other writers that the only possible beneficiaries were States. States undoubtedly had the right of self-

determination; the fact that a people had set up an independent State did not deprive it of that right, which meant that the people concerned were free to choose their institutions and their economic and social system and free to conduct their own internal and external affairs.

The question arose, however, whether the same right should be granted to the various peoples living within the borders of a single State in their relations with that State. The arguments made against the affirmative view seemed rather lacking in substance in view of all the evidence of a different intention of the authors of the Charter, which had been confirmed by the practice of States since 1945.

The authors of the Charter had been well aware that the right of self-determination could come into conflict with the sovereignty of the State, despite the fact that that sovereignty was based precisely on self-determination. They had endeavoured to avoid that conflict and to overcome the difficulty by defining the scope of the principle of equal rights and self-determination of peoples in a whole series of specific provisions, which had been described as compromise texts, but which were intended mainly to strike a balance between the various principles embodied in the Charter which the Special Committee had been asked to codify. It was necessary to take into account not only Article 1(2), Article 55 and Chapters XI and XII of the Charter, but also Article 2(7), which contained a principle that the Committee was also called upon to consider.

Those various provisions undoubtedly imposed positive obligations upon Member States with respect to their dependent peoples. Under contemporary conditions, the application was primarily to peoples under a colonial regime. It was in relation to them that the principle of equal rights prohibited the domination of one people by another, and the right of self-determination implied that peoples under a colonial regime should be allowed to express themselves freely with regard to their political future; they were thus free to pronounce in favour of independence or of any other solution which might better serve their interests.

France, for its part, fully recognized the principle under discussion and had applied it with all its consequences to dependent peoples. That process had led to the establishment of numerous independent sovereign States, which were now Members of the United Nations.

Although the French delegation agreed that, in the formulation of the principle under discussion, special prominence should be given to the problem of peoples still under a colonial regime, that should not detract in any way from the universal validity of the principle.

The relevant Charter provisions, considered in the light of subsequent practice, clearly also imposed a negative obligation on States; they prohibited any action to suppress or prevent the exercise of the right of self-determination by the people of another State.

Certain delegations had maintained that the principle under discussion could serve as a basis for intervention by one State in the affairs of another, by organizing or encouraging the formation of irregular forces or armed bands or by carrying out of acts of terrorism against its Government. The French delegation could not accept that unwarranted extension of the principle, which would bring it into conflict with all the other principles before the Special Committee, more particularly with the prohibition of the use of force and the principles of non-intervention and sovereign equality. Thus extended, the principle would serve as a cover for every possible abuse, and recent history unfortunately provided far too many examples in which the right of self-determination had served merely as a cloak for a policy of aggression and subversion.

The opinion of those delegations had no basis whatsoever in the Charter, which absolutely prohibited all threat or use of force against the territorial integrity or the political independence of all States without exception and only authorized the resort to force in the cases of self-defence under Article 51 and collective action decided in accordance with Chapters VII and VIII.

It was in the light of those remarks that his delegation would consider the various proposals before the Committee, all of which had some positive aspects, but none of which had succeeded in overcoming all the difficulties. Some of the proposals were even in direct conflict with the Charter, the provisions of which were, of course, mandatory for the Special Committee. The United Kingdom proposal seemed to be closest to the present state of the law which the Committee had been instructed to codify. The French delegation reserved its right to propose amendments in the Drafting Committee, with a view to arriving at a better formulation of the important principle under consideration.

Mr. TOGO (Japan) said that it was one of the most important and fundamental policies of his Government to oppose any form of inequality or subjugation of peoples to foreign domination. As all those present were aware, Japan had reappeared as a member of the community of nations a little more than a 100 years previously. For domestic reasons, it had obstinately closed its door for more than 250 years prior to that, and when at last forced to open its eyes to the cold facts of international life by the visit of the "black ships" of the Great Powers of the time, Japan had found itself in a very difficult situation. Very few independent countries then existed in

Asia and Africa, and what was taking place in China had profoundly alarmed the Japanese leaders. Had any time been lost, the Japanese people would have suffered the same fate as the peoples of Asia and Africa. Since then, Japan's struggle to develop as a nation without losing its independence had been a long and strenuous one. It had taken years to get rid of unequal treaties. Japanese people had encountered racial discrimination everywhere and had also been deeply hurt to see so many peoples under subjugation throughout Asia and Africa.

It was against that background that the Japanese Government had made every effort, in the Drafting Committee for the Covenant of the League of Nations at Versailles in 1919, to establish the principle of equality of peoples, unfortunately without success. A quarter of a century later, however, the principle of equality of peoples that the Japanese Government had so vigorously advocated at Versailles had been finally incorporated in the preamble and various articles of the United Nations Charter.

Since the end of the Second World War, the great winds of equality and self-determination of peoples had begun to blow with irresistible force, first from Asia, then from Africa, and finally they had swept all over the world. The Japanese people were gratified to see that inequality and subjugation were now becoming the exception rather than the rule, but that did not mean that they were not anxious about, or did not sympathize with, peoples which were still living under such conditions. They most ardently desired that equality and self-determination should be achieved by all peoples for all time.

The Japanese delegation had supported General Assembly resolution 2160 (XXI) as an expression of political intent by the Members of the United Nations. When it came to stating principles of international law, however, it was obliged to take a more cautious view, as the Japanese delegation had said when the resolution had been adopted.

His delegation had gained the impression that each of the various proposals submitted to the Committee reflected the desire of its authors for the attainment of equality and self-determination for all peoples; the differences between them seemed to lie in the ways suggested for achieving it. In the light of what he had said earlier, it would be obvious that his delegation shared the sentiments expressed in some of the proposals, in particular that of the non-aligned countries in which it read a deep sense of impatience and frustration that the ultimate goal of equality for all men could not be achieved.

His delegation fully realized that the principle of equal rights and self-determination of peoples was one of the most important principles embodied in the Charter and that all Member States had an obligation under the Charter not only to respect that principle but also to implement it. It was difficult, however, to accept a formulation such as that contained in paragraph 2(b) of the non-aligned countries' draft. In spite of the clear statement in the Charter of the principle of equal rights and self-determination of peoples, his delegation was not fully convinced that such rights could be called rights under international law in the same sense as the right of sovereign equality or other rights of States. In saying that, he did not wish for a moment to deny the existence of equal rights or the right of self-determination of peoples. The Charter also contained a clear statement of "human rights and fundamental freedoms for all without distinction as to race, sex, language or religion", and his delegation did not deny that those were also rights; by neglecting human rights and fundamental freedoms, a State would, without doubt, be violating the Charter. An individual, however, had not the means of redress, against such violations by the State, so that such rights could not be considered as being established under international law. What his delegation would like to have clarified was whether "peoples" could be considered as subjects of international law, with all the rights and obligations accruing thereunder.

His delegation also had misgivings about the use of the term "self-defence" in regard to peoples, in paragraph 2(b) of the non-aligned countries' draft. The concept of self-defence should be treated with the utmost caution. For many years, scholars of international law had done their utmost to give a proper definition of the concept, particularly in recent times because, under the Charter of the United Nations, self-defence was one of the few reasons for which States could legally resort to the use of armed force. To expand the application of the concept without due regard to all its implications would be detrimental to the maintenance of international peace and security.

Lastly, his delegation had some difficulty with the phrase "by virtue of which they may receive assistance from other States" at the end of paragraph 2(b), since it might well be exploited as a pretext for interfering in the internal affairs of other States.

While sharing the sense of impatience and frustration at not being able to realize ultimate justice and equality for all mankind, his delegation nevertheless considered that a principle of international law should not be hastily formulated, since international law was the main bulwark of peace and stability in the world.

Mr. SINCLAIR (United Kingdom) referred members to what he had said about the scope and content of the principle of self-determination at the 57th meeting and at the 45th meeting in 1966. The United Kingdom proposal on the principle of equal rights and self-determination was an amalgam of elements from the 1966 United States proposal, the non-aligned proposal and resolution 1514 (XIV). His delegation had also incorporated two new elements in paragraphs 2 (a) and 2 (b) and did not anticipate any objection to them, since it was common ground that self-determination could only operate effectively when human rights and fundamental freedom were respected and safeguarded.

Paragraph 2 (b) of the proposal had been carefully drafted in an endeavour to reconcile the differences on the question whether the concept of self-determination was to be regarded as a right or as a principle. In the past his delegation had opposed its being formulated in terms of a right, primarily because of the almost insuperable difficulty of defining or identifying the category of persons possessing the right. The new proposal was a serious and far-reaching attempt to overcome that difficulty. If the essential element of the principle were expressed in the form of a duty imposed on States to accord to peoples within their jurisdiction, in the spirit of the Universal Declaration of Human Rights, the right freely to determine their political status, the Committee would be able to avoid most of the serious conceptual and logical problems involved. The wording of paragraph 2 (b) largely avoided those problems by expressing self-determination in the form of a fundamental human right and by imposing upon States the duty to accord that right to peoples within their jurisdiction. His Government hoped that that new initiative, which meant holding in abeyance the views it had consistently maintained in the past, would meet with understanding.

Paragraph 2 (c) of the United Kingdom proposal originated in the corresponding paragraph of the non-aligned proposal which in turn was based upon paragraph 6 of General Assembly resolution 1514 (XIV).

Paragraph 2 (d) derived in part from paragraph 2.A (3)(a) of the 1966 United States proposal, revised and expanded to incorporate language closer to that of Article 73 (b) of the Charter. Paragraphs 3 and 4 of the United Kingdom proposal were based largely on the corresponding paragraphs in the United States proposal of 1966, with certain textual modifications to meet the criticisms then advanced. The fundamental concept expressed in paragraph 3 came from the provisions of General Assembly resolution 1541 (XV).

Commenting on the Czechoslovak proposal he said that it had a number of serious and obvious difficulties. The first sentence of paragraph 1 seemed to imply that all "peoples" - a term which was presumably deliberately left undefined - had the right to self-determination including the right to establish an independent national State. The provision was not qualified in any way and the effect must surely be, if the word "peoples" were given its ordinary, natural meaning, to encourage secessionist or irredentist movements. In answer to a point made by the representative of Burma at the 68th meeting, he said that the United Kingdom proposal was not intended to encourage or condone secessionist or irredentist movements. As he had pointed out in his statement at the 45th meeting, his delegation could find nothing in the language of the Charter about the principle of equal rights and self-determination to support the claim that part of a sovereign independent State was entitled to secede. Because of its concern to establish the falsity of that claim it had inserted paragraph 4 in its new proposal as an additional safeguard to that in paragraph 2 (c). Paragraph 2 (c) aimed at establishing the duty of every State to refrain from acts which might disrupt the national unity of another State, but within the framework of that principle it was necessary to provide that fully sovereign and independent States were conducting themselves in conformity with the principle as regards peoples subject to their jurisdiction, if they had representative and effective internal machinery of government. The use of the word "representative" in paragraph 4 was not intended to mean that only one system of government properly met the criterion; the essence of the provision was rather to protect the territorial integrity of fully sovereign and independent States. Possibly the drafting of the provision could be made clearer, but he hoped that his explanation would have dispelled any doubts.

Paragraph 2 of the Czechoslovak proposal had no basis in the Charter or in international law. His delegation respected the strong views held by many members of the Committee about the evils of colonialism, but was unable to subscribe to the thesis that colonialism as such was contrary to the Charter or international law. As an administering power with continued responsibilities for certain Non-Self-Governing Territories, his Government was fully aware of its obligations under Article 73 and was constructively discharging them. Its record in the process of decolonization required no defence.

He had already commented on the so-called right of self-defence against colonial domination set out in paragraph 3 of the Czechoslovak proposal in the form of an asserted right "to eliminate colonial domination". Such a provision as well as that

Annex 62

United Nations General Assembly, Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/6700/Add.8, Chapter XIV, 1967

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REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

(covering its work during 1967)

Rapporteur: Mr. Mohsen S. ESFANDIARY (Iran)

CHAPTER XIV

MAURITIUS, SEYCHELLES AND ST. HELENA

CONTENTS

* This document contains chapter XIV of the Special Committee's report to the General Assembly. The general introductory chapter will be issued subsequently under the symbol A/6700 (Part I). Other chapters of the report are being reproduced as addenda.

I. ACTION PREVIOUSLY TAKEN BY THE SPECIAL COMMITTEE AND BY THE GENERAL ASSEMBLY

1. In 1964, the Special Committee adopted conclusions and recommendations concerning Mauritius, Seychelles and St. Helena.[1/] The three Territories were considered at two meetings in 1966 by the Special Committee, which also had before it the report of Sub-Committee I concerning these Territories.[2/] At the second of the two meetings, the Special Committee adopted the report without objection and endorsed the conclusions and recommendations contained therein.

2. In these conclusions and recommendations, the Sub-Committee stated that the administering Power had failed to implement General Assembly resolution 1514 (XV) of 14 December 1960 and expressed regret at the slow pace of political development in the three Territories. In particular, it noted that the complicated electoral arrangements devised for Mauritius had apparently been the subject of great controversy between the various groups and political parties, and that the people of Seychelles were still deprived of the right of universal adult suffrage. The Sub-Committee therefore recommended that the Special Committee should reaffirm the inalienable right of the peoples of the three Territories to self-determination and independence; that they should be allowed to exercise their right of self-determination without delay; that any constitutional changes should be left to these peoples themselves; and that free elections on the basis of universal adult suffrage should be conducted in these Territories as soon as possible with a view to the formation of responsible governments to which all power could be transferred.

3. Taking into account the creation of the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, and the reported activation of a plan to establish military bases in the three Territories, the Sub-Committee recommended that the administering Power should be called upon to respect the territorial integrity of Mauritius and Seychelles and to refrain from using all three Territories for military purposes, in fulfilment of the relevant resolutions of the General Assembly. The Sub-Committee further recommended that

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1/ Official Records of the General Assembly, Nineteenth Session, Annex No. 8 (A/5800/Rev.1), chapter XIV.

2/ A/6300/Add.9, chapter XIV, annex.

the Special Committee should urge the Assembly to state categorically that any bilateral agreements concluded between the administering Power and other Powers affecting the sovereignty and fundamental rights of these Territories should not be recognized as valid.

4. Concluding that the economies of the Territories were characterized by diminishing revenue, increasing unemployment and consequently a declining standard of living, and that foreign companies continued to exploit the Territories without regard to their true interests, the Sub-Committee recommended that the administering Power should be called upon to preserve the right of the indigenous inhabitants to dispose of their national wealth and resources, as well as to take effective measures for diversifying the economies of the Territories.

5. At its twentieth session, the General Assembly adopted two resolutions, one concerning Mauritius (resolution 2066 (XX) of 16 December 1965) and the other concerning twenty-six Territories, including Seychelles and St. Helena (resolution 2069 (XX) of 16 December 1965). At its twenty-first session, it adopted resolution 2232 (XXI) on 20 December 1966 concerning twenty-five Territories, including Mauritius, Seychelles and St. Helena. The resolution called upon the administering Powers to implement without delay the relevant resolutions of the General Assembly. It reiterated the Assembly's declaration that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories was incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV). It urged the administering Powers to allow visiting missions to visit the Territories and to extend to them full co-operation and assistance. It decided that the United Nations should render all help to the peoples of the Territories in their efforts freely to decide their future status. Finally, it requested the Special Committee to pay special attention to the Territories and to report on the implementation of the present resolution to the General Assembly at its twenty-second session.

II. INFORMATION ON THE TERRITORIES[3/]

A. MAURITIUS

General

6. The Territory of Mauritius consists of the island of Mauritius and its dependencies, Rodrigues, Agalega and the Cargados Carajos. The island of Mauritius lies in the western Indian Ocean, about 500 miles east of Madagascar. Rodrigues, the main dependency, lies a further 350 miles to the east, the Cargados Carajos 250 miles and Agalega 850 miles to the north. Situated 1,200 miles north-east of Mauritius is the Chagos Archipelago, which according to the administering Power, is no longer part of Mauritius and is included in the "British Indian Ocean Territory".

7. The island of Mauritius is of volcanic origin; its total area is approximately 720 square miles. The northern part of the island is a flat plain rising to a fertile central plateau. There are several small chains of mountains, the principal peaks reaching about 2,700 feet. There are numerous short, swift rivers with waterfalls, some of them used to generate hydro-electric power. Rodrigues, a mountainous island of volcanic origin, covers an area of about 40 square miles. All the islands of Agalega and the Cargados Carajos are coral islands with an area of approximately 27.5 square miles.

8. The estimated population of Mauritius at the end of 1965, excluding the dependencies, was 751,421 (compared with 733,605 at the end of 1964) divided into a general population comprising Europeans, mainly French, Africans and persons of mixed origin, 220,093; Indo-Mauritians, made up of immigrants from the Indian sub-continent and their descendants, 506,552 (of whom 383,542 were Hindus and 123,010 Muslims); and Chinese consisting of immigrants from China and their descendants, 24,776. Latest estimates (January 1967) are that the population will rise to about 800,000 by the end of 1967.

3/ Section II of this working paper is based on: (a) information collected by the Secretariat from published sources; and (b) information transmitted under Article 73 e by the United Kingdom of Great Britain and Northern Ireland for the year ending 31 December 1965.

9. The Territory, which is already very densely populated, is beset with a rapid growth of population resulting in a reduction of living standards among certain sections of the people and an increasing level of unemployment.

Constitution and Government

10. Under the Mauritius (Constitution) Order, 1964, the Government of the Colony of Mauritius is vested in a Governor, with a Council of Ministers and a Legislative Assembly. The Council of Ministers consists of the Premier and Minister of Finance, the Chief Secretary and not less than ten and not more than thirteen other ministers appointed by the Governor on the advice of the Premier from among the elected or nominated members of the Legislative Assembly. The Governor appoints to the office of Premier the member of the Legislative Assembly who appears to him likely to command the support of the majority of members. The Council is the principal instrument of policy and, with certain exceptions, the Governor is obliged to consult it in the exercise of his functions. The Legislative Assembly consists of the Chief Secretary, forty elected members and up to fifteen other members nominated by the Governor.

11. The status of the political parties in the Legislative Assembly has remained the same since October 1963 general elections: Mauritius Labour Party (MLP), which represents mainly the Indo-Mauritian and Creole (Afro-European) communities, 19; Parti Mauricien Social Démocrate (PMSD), which traditionally represented the Franco-Mauritian land-owning class and the Creole middle class, and which now claims to draw support from all communities, 8; Independent Forward Bloc (IFB), which is to the left of the MLP, 7; Muslim Committee of Action (MCA), which has the support of a substantial proportion of Muslims, 4; and independent, 2.

12. The Government formed by Sir Seenoosagur Ramgoolam, leader of the MLP, is a coalition composed of all the parties represented in the Assembly, with the exception of the PMSD.

Recent constitutional developments

13. As previously noted by the Special Committee,[4/] a Constitutional Conference attended by representatives of all the parties in the Mauritius Legislature was

4/ A/6300/Add.9, chapter XIV.

held in London from 7 to 24 September 1965. The main point at issue was whether the Territory should aim at independence or association with the United Kingdom. The MLP and the IFB advocated independence, and the MCA was also prepared to support independence, subject to certain electoral safeguards for the Muslim community. On the other hand, the PMSD favoured a continuing link with the United Kingdom. At the end of the conference, the Secretary of State for the Colonies announced the decision that Mauritius should go forward to full independence subject to an affirmative resolution passed by a simple majority of the new Assembly after elections and a period of six months' full internal self-government. He also hoped that the necessary processes could be completed before the end of 1966.

14. In January 1966, an electoral commission, with Sir Harold Banwell as chairman, visited Mauritius to formulate an electoral system and the method of allocating seats in the Legislature. The report[5/] was published on 13 June 1966 and accepted by the parties participating in the present Government and the Opposition PMSD after certain amendments to the recommendations of the report had been made, following the visit of Mr. John Stonehouse, Parliamentary Under-Secretary of State, to Mauritius between 16 June and 4 July 1966.

15. Under the electoral arrangements now accepted by the four main parties, sixty members will be returned for the island of Mauritius by block voting (each elector being obliged to cast three votes) in twenty three-member constituencies, and two members returned for Rodrigues (the principal dependency of Mauritius) by block voting in a single constituency. The members elected for Rodrigues will also represent the interests of the two lesser dependencies, namely, Cargados Carajos and Agalega.

16. In addition, eight specially elected members will be returned from among unsuccessful candidates who have made the best showing in the elections. The first four of these seats will go, irrespective of party, to the "best losers" of whichever communities are under-represented in the Legislative Assembly after the constituency elections. The remaining four seats will be allocated on the basis of party and community. Parties or party alliances will be permitted to qualify

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5/ Report of the Banwell Commission on the Electoral System, Colonial No. 362, HMSO, 1966.

for the "best loser" seats if registered with the Electoral Commissioner before nomination day.

17. The Constitution of Mauritius set out in the Mauritius Constitution Order, 1966, which was made on 21 December 1966, incorporated the proposals agreed upon at the 1965 constitutional conference, as well as the subsequent agreement on electoral arrangements. The Order in Council provides that the new Constitution will come into effect on a date to be appointed by the Governor. It also provides that the provision for the appointment of an ombudsman may be brought into effect at a later date from the generality of the other constitutional proposals.

Election arrangements

18. Subject to certain exceptions, such as convicted criminals and the insane, all Commonwealth citizens satisfying a two-year residence requirement who have attained the age of 21 years are qualified to register as electors. New registers of electors were prepared in 1966. They were published on 23 January 1967 and brought into force the following day. The total numbers on the new registers are 307,908 for Mauritius plus 7,876 in Rodrigues, making a combined total of 315,784. Four Commonwealth observers (with Sir Colin MacGregor of Jamaica as chairman) were appointed to observe the various processes involved in compiling the new registers. Three of the members arrived in Mauritius on 5 September 1966 and one or more member was present from then until 28 November.

19. Discussions took place in London in December 1966 between the Secretary of State for the Colonies and the Premier of Mauritius about the date for the forthcoming general elections in the Territory. In a statement published on 21 December 1966, the Commonwealth Office said that the United Kingdom Government's view presented during the discussions was that it was most desirable that elections should be held at the earliest practicable time, bearing in mind that at the 1965 Constitutional Conference, the then Secretary of State had hoped that Mauritius could become independent before the end of 1966. Neither the United Kingdom Government nor the Government of Mauritius could avoid the subsequent delays, but the completion of the register of electors in the relatively near future would enable elections to be held in 1967.

20. The Commonwealth Office also said that the Secretary of State had expressed the hope that the Premier would share his wish to see early elections and that the Premier had confirmed that he would wish elections to be held in 1967.

Recent political developments

21. Following the issuance of the report of the Banwell Commission, the three parties participating in the present Government organized a common front, the Pro-Independence Front, under the leadership of the Premier in protest against the Commission's proposals for electoral arrangements. Subsequently, the Front was reported to have been maintained for the forthcoming general elections.

22. On 5 September 1966, Mr. G. Duval, who later became the leader of the Opposition PMSD, was reported to have said that two important election issues were the constitutional future of the Territory and the inability of the Government to put the economy on a sound basis or to look after the destitute.

23. On the same day, Mr. Duval started a movement of passive resistance in Mauritius. Following the reported refusal by the Government to pay them the same amount of relief aid allocated to certain other categories of unemployed workers, some 200 unemployed licensees of the urban administration demonstrated in Curepipe and were arrested for the obstruction of traffic. Later, the Government took action to settle the issue in dispute.

24. At the end of October 1966, over 100 unemployed persons rejected an offer of work on sugar estates, alleging political discrimination. They demonstrated at various places between Mahébourg and Curepipe, culminating in the arrest of 105 persons on 29 October for obstructing the highway. On 4 November, they were tried and found guilty, but were discharged from prison after having received a warning from the Court of Curepipe.

External relations

25. During a visit to the United States of America early in December 1966, the Premier of Mauritius said that his Government was seeking to improve relations between the two countries, to raise the price of the two principal products of Mauritius, sugar and tea, as well as to secure aid for creating secondary industries, increasing the production of foodstuffs, notably rice and flour,

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establishing a new aerial link with Africa, Europe and the United States, reducing population pressure and unemployment, and setting up a university. After discussions with the representatives of the United States Government and various private organizations, he expressed the hope that they would help Mauritius in finding solutions to many of its problems.

"British Indian Ocean Territory"

26. Reference is made in the last report of the Special Committee[6/] to the "British Indian Ocean Territory" which comprises certain islands formerly administered by the Governments of Mauritius and Seychelles, and which was created in 1965 for the construction of defence facilities by the Governments of the United Kingdom and the United States. As compensation for the transfer of these islands to the new Colony, the United Kingdom Government paid £3 million to Mauritius in March 1966 with no conditions attached, and will build an international airfield for Seychelles. On 16 November 1966, the Secretary of State for Defence stated in reply to a question in the United Kingdom House of Commons that no plan had been made for the creation of military bases in the "British Indian Ocean Territory". Thus he could not give any figure for the cost of such a scheme.

Economic conditions

27. Mauritius is primarily an agricultural country. In 1960, it suffered a severe economic setback brought about by two disastrous cyclones. Subsequently, the economy made a good recovery, reaching a peak in 1963, which saw a bumper sugar crop combined with higher sugar prices. If these two years are not taken into account, the gross national product showed a steady growth, from Rs.681 million[7/] in 1959 to Rs.799 million in 1965. During this period, the population increased from 637,000 to 751,000. There was a slight downward trend in *per capita* income and a rise in the level of unemployment.

28. In 1965, sugar was still the mainstay of the economy. Tea had become the second most important export product. In acres, the total area of land under

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6/ A/6300/Add.9, chapter XIV.

7/ One Mauritius rupee is equivalent to 1s. 6d. sterling.

cultivation comprised: sugar, 214,400; tea, 6,600; tobacco, 1,000; aloe fib 900; foodcrops, vegetables and fruits, 10,000.

29. In September 1966, the Chamber of Agriculture of Mauritius estimated su output for the full year at about 575,000 metric tons, representing a consid decrease from 1965, when a total of 665,000 metric tons had been produced. "Denise" and drought accounted for the decline in output.

30. Sugar is disposed of primarily in accordance with the Commonwealth Sug Agreement, which has been renewed until 1974. Under the Agreement, Mauriti exports a quota (380,000 tons per annum) to the United Kingdom at a negotia price (£47.10s a ton in 1966-68). In addition, Mauritius may export to Commonwealth preferential markets (in fact the United Kingdom and Canada) a agreed quota each year. The remainder of the sugar production is sold to n Commonwealth countries at the world free market price, which in 1966 was substantially below the negotiated price. Exports of sugar to the United K the Territory's principal customer, in the first ten months of the year tot 307,786 tons (Rs.208.6 million), an increase of 59,350 tons (Rs.42.5 millio the 1965 period. However, it was estimated that the gross income of the su industry might be moderately lower in 1966 than in the preceding year, when 569,400 tons of sugar (Rs.290.3 million) were exported.

31. Manufacturing is the second largest sector of the economy. The United Central Office of Information reported in October 1966 that since 1963, nea fifty new secondary industries had been introduced on a small scale in the Territory. As previously noted,[8/] the number of such industries establishe years 1963 to 1965 was eight, eleven and twenty-five respectively.

32. Between the first and second quarter of 1966, imports increased from Rs.80.4 million to Rs.82.9 million, while exports decreased from Rs.56.7 mi to Rs.6.3 million. No significant changes occurred in the structure of imp but exports of sugar in the first quarter were Rs.47.3 million and in the s quarter Rs.0.5 million. The third quarter figure was Rs.134.6 million, mak total for the first nine months of Rs.182.4 million. As in the past, trade

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8/ A/6300/Add.9, chapter XIV.

conducted mainly with the United Kingdom, which received 73 per cent of the Territory's exports and provided 23 per cent of its imports in the first half of 1966.

33. In July 1966, the Government decided to increase both direct and indirect taxes in order to balance its budget.

34. Capital expenditure under the 1966-70 Development Programme will be Rs.340 million and the fund will be allocated as follows: agriculture and industry, Rs.130 million; infra-structure, Rs.99 million; social services, Rs.82 million; administration, Rs.28 million; Rodrigues, Rs.1 million.

35. Premier Ramgoolam said in a recent address that an important economic problem for the Territory was that the price of sugar could not be stabilized at a remunerative level.

36. The Premier said that progress in the diversification of the Territory's economy had been slow. The Territory was putting 1,000 acres under tea annually, and it was the intention of the Government to extend this by a further 15,000 acres. The sugar industry had undertaken to provide capital out of its surplus for the erection of seven more tea factories. Businessmen were being encouraged to invest in Mauritius, and in recent years a number of light industries had been established. Industrial expansion had been facilitated by the setting up of the Development Bank of Mauritius, the advisory National Development Council and a marketing board. An East African Economic Community was under discussion, and if this were to materialize it would give further encouragement to many smaller industries.

37. While aware that conditions such as the rapid rise in population, the scarcity of local capital and the paucity of technological know-how had limited economic growth, the Premier nevertheless asserted that the Territory enjoyed a stability and prosperity unknown before in its history through a better distribution of the national income. This was being achieved by a planned economy and a regulated fiscal policy. Recurrent and developmental annual expenditures totalled approximately over £22 million. The sum of £6 million was spent annually on the development programme alone, and 48 per cent of this was financed from local resources. Mauritius was a viable country, which had never needed a grant-in-aid to balance its budget.

38. In December 1966 the Premier made a visit to the United States, the main purpose of which was to seek aid to tackle the economic and social problems confronting the Territory (see paragraph 25 above).

39. On 20 December 1966, Mr. John Stonehouse, Parliamentary Under-Secretary of State, stated in reply to a question in the United Kingdom House of Commons that during the period 1961-66, the United Kingdom had provided Mauritius with financial aid totalling £8.1 million, in addition to the compensation of £3 million paid for the inclusion of certain of its islands in the "British Indian Ocean Territory", and to a £2 million loan raised by the Government of Mauritius on the London market. For the period 1965-68, total Colonial Development and Welfare grants and loan assistance given or envisaged amounted to £4.4 million. Aid to Mauritius after 31 March 1968 would depend on the total resources the United Kingdom could make available for overseas aid at the time and the Territory's needs in relation to those of other recipients of British aid.

40. In response to another question, Mr. Stonehouse stated that in order to combat chronic, widespread unemployment in Mauritius, his Government was examining various ways by which the Territory's economy could be diversified. But he added that the economy was almost completely dependent on sugar and that there were problems in arranging for any new industrial development. These questions were being studied.

Social conditions

41. Labour. In recent years, the economy has not expanded fast enough to provide work for all the new entrants into the labour force. Between mid-1962 and mid-1965 the annual increase in the working-age population and unemployment was estimated at about 6,500 and over 4,000 respectively. During the period, the number registered as unemployed rose by 4,700 and that on relief work by 9,050, making a total of 13,750.

42. On 28 April 1966, the Government published the first of its bi-annual surveys of employment and earnings in large establishments.[9/] The main purpose of these surveys was not to find out figures of total employment but to provide a continuou

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9/ Colony of Mauritius: A Survey of Employment and Earnings in Large Establishments (No. 1), 28 April 1966.

series of comparable data which would show changes in employment from year to year, from one part of the year to another and between the various sectors of the economy. The survey covered 822 establishments, which in April 1966 employed 119,270 workers (including 34,210 on monthly rates of pay and 85,060 on daily rates of pay). Agriculture accounted for 55,200 (including 51,870 employed by the sugar industry), services 45,850, manufacturing 6,850, transport, storage and communications 4,100, commerce 2,960, construction 2,730, electricity 1,310, mining and quarrying 160, and others, 110. The average monthly rates of pay ranged from Rs. 273 for agricultural workers to Rs. 500 for electricians. The average daily rates of pay ranged from Rs. 3.2 for miners to Rs. 8.8 for those engaged in miscellaneous activities.

43. In 1965, there were seventy-nine associations of employees (one more than in 1964), with a membership of 48,349 (120 more than in 1964). There were ten trade disputes involving 1,660 workers and resulting in a loss of 3,860 man-days. The main cause of these disputes was dissatisfaction with conditions of employment.

44. Labour relations in the sugar industry formed a subject of discussion in the Legislative Assembly on 29 November 1966. A member of the Assembly, Mr. J.N. Roy, introduced a motion which would have the Assembly express the view that the widespread and defiant opposition to Indo-Mauritian workers in the sugar industry, if not checked by legislation, threatened to wreck the industry.

45. Commenting on the motion, another member of the Assembly, Mr. Jomadar, who was formerly the Minister of Labour, stated that it was very opportune and that a section of workers in the sugar industry was the victim of injustice. Having made an appeal for eliminating all forms of discrimination and injustice, he proposed an amendment to the motion, which was then adopted unanimously.

46. Under this amendment, the Assembly would express the view that a tripartite standing committee be set up by the Government in co-operation with employers and employees in the sugar industry for the discussion of all matters of concern either to employers or employees or which could adversely affect the good relations between them or the efficiency of the industry. These would include steps to ensure equality of opportunity in recruitment and promotion, and especially the discussion and disposal of possible complaints of discrimination against any category of workers or employees for suspected political affiliation or for any other cause.

47. The Premier of Mauritius said in a recent address that the main problems confronting the Territory today were the rapid rise in population and widespread

unemployment. For many years, the government machinery had been geared to tackle these problems at many levels of administration. However, time had been lost in the beginning because some people had opposed population control on religious grounds, but a change of attitude had come about. With the assistance of the Government and the International Planned Parenthood Federation, two voluntary associations were performing good work both in the urban and rural areas. Mauritius had also been promised considerable aid from the Swedish Government.

48. As to unemployment, the Premier stated, the Government was engaged actively in long-term development of the Territory and pursued a rationalized policy of emigration. It hoped to mobilize all local resources for the creation of more work and wealth. It had also decided not to place an embargo on the export of capital in order to attract foreign investors to Mauritius. But any Mauritian emigrating overseas was only allowed to remove his capital from the country over a number of years. At present, certain labour-intensive projects including tea, textiles and edible oils were being undertaken, which would provide employment for a large number of people. By 1970, it was hoped to provide work for most of the labour force.

49. Public health. There are three systems of providing medical services in Mauritius, of which the largest is the government medical services, administered by the Ministry of Health. Other medical services are provided by the sugar estates for their employees, as required by the Labour Ordinance, while maternity and child welfare services are provided partly by the Government and partly by a voluntary body - the Maternity and Child Welfare Society.

50. Recently, some important changes have occurred in these systems. Government expenditure on medical and health services in the financial year 1964-65 was Rs. 19.7 million (an increase of Rs. 0.5 million over the previous year), or about 9.6 per cent of the Territory's total expenditure. In 1965, there were 137 government and 74 private physicians (compared with 118 and 65 respectively in the previous year). There was, thus, one physician for every 3,400 persons. A total of twenty-four hospitals was maintained by the sugar estates, representing a reduction of one from the previous year. The number of beds available for in-patients in the Territory decreased by fifteen to 3,339 and that of general beds by forty-five to 2,706, amounting to a proportion of one general bed per 361 persons.

51. During 1966, the Government began to construct a 600-bed hospital at Pamplemousses, the total cost of which was estimated at £2.1 million. On 25 November 1966, the United Kingdom Ministry of Overseas Development announced that Colonial Development and Welfare allocations totalling £1.4 million had been made available towards this project. Early in 1967 the Ministry provided a gynaecologist to give instruction to medical, nursing and other staff in family planning work and a medical administrator to work in the Mauritius Ministry of Health. The Ministry is also supplying equipment to the value of approximately £4,000 for thirteen clinics. On 20 December 1966, Mr. Stonehouse said in reply to a question in the United Kingdom House of Commons that in Mauritius, the number of family planning clinics had recently been increased from 98 to 124 and that the programme was very successful.

Educational conditions

52. Enrolment in primary, secondary, teacher training and vocational training schools in 1965 was as follows:

	Schools	Enrolment	Teachers
Primary education	331 a/	134,534 b/	4,015
Secondary education	135 c/	34,121	1,484
Teacher training	1 d/	424	26
Vocational training	4 d/	234	19

a/ Comprising 160 government, 55 aided and 116 private schools.

b/ Representing over 88 per cent of all children of primary school age (5-6 to 11-12 years).

c/ Comprising 4 government, 13 aided and 118 private schools.

d/ Government schools.

53. In 1965, the Government opened seven new primary schools, extended one secondary school and established the John Kennedy College. This college provides full-time training in technical and commercial subjects and also a variety of part-time and evening courses. Full-time, post-secondary education is provided by the Teachers' Training College and the College of Agriculture. The latter is managed by the Department of Agriculture and most of its diplomats enter the sugar industry.

During the year, there were over 1,200 students following full-time courses institutions of higher education overseas.

54. In December 1965, the University of Mauritius (Provisional Council) Or became law. The United Kingdom Government has made an initial pledge of Rs. 3 million from Colonial Development and Welfare funds to finance a deve plan for the University. Dr. S.J. Hale of the University of Edinburgh has appointed Vice-Chancellor. The Premier of Mauritius said in a recent addre steps were being taken towards the establishment of the University where st would be taught and trained in technology and science.

55. Government expenditure on education in the financial year 1964-65 tot Rs. 28.9 million (an increase of Rs. 0.6 million over the previous year), Rs. 26 million was recurrent and Rs. 2.9 million capital expenditure. Edu accounted for 12.7 per cent of the Territory's total recurrent expenditure

B. SEYCHELLES

General

56. As from 8 November 1965, when three of its islands were included in the "British Indian Ocean Territory", the Territory of Seychelles has comprised eighty-nine islands situated in the western Indian Ocean approximately 1,000 miles east of the Kenya coast. The islands, with a land area of some eighty-nine square miles, fall into two groups of entirely different geological formation, thirty-two being granite and the rest coral. The granite islands are predominantly mountainous. In some of them and particularly in Mahé, the largest island, which has an area of about 55.5 square miles, a narrow coastal belt of level land surrounds the granitic mountain massif, which rises steeply to an elevation, at Morne Seychellois, the highest peak, of almost 3,000 feet. The coral islands are flat, elevated coral reefs at different stages of formation.

57. Most of the inhabitants of the Seychelles are descended from the early French and African settlers. Early in 1966, the population of Seychelles was estimated to be about 48,000 (compared with 47,400 at the end of June 1965), nearly all of whom lived in the granitic island group. Three quarters of the Territory's population lives on Mahé, and most of the remainder on Praslin, La Digue and Silhouette. There are very few permanent residents on the coral islands.

58. The present population is increasing at a rate believed to be in excess of 3 per cent per annum. If this rate is maintained, the population will double in less than twenty-three years. The rapid growth of population has slowed down the rise in living standards among certain sections of the people, and reduced employment opportunities.

Constitution and Government

59. The Government of the Colony of Seychelles consists of a Governor, a Legislative Council and an Executive Council. The Governor is empowered to enact laws with the advice and consent of the Legislative Council, subject to the retention by the Crown of the power to disallow or refuse consent.

60. Under a 1960 Order in Council, the Legislative Council consists of the Governor, as president, four ex officio members (the Colonial Secretary, Attorney-General, Administrative Secretary and Financial Secretary), five elected and three nominated members, of whom at least one must be an unofficial member. General elections, on a broad franchise based on a simple literacy test, must take place every four years. The last elections were held in July 1963.

61. The Executive Council consists of the Governor, who presides, four ex officio members and such other persons, at least one of whom must be an unofficial member, as the Governor may from time to time appoint. The composition of the present Executive Council is identical with that of the Legislative Council.

Recent political and constitutional developments

62. At the 1963 elections, all except one of the five elected seats in the Legislative Council were contested to some extent on party lines between candidates broadly supported either by the long-established Seychelles Taxpayers and Producers Association, representing European planters' interests, or the newly formed Seychelles Islands United Party, drawing its support mainly from the middle and working classes. Both parties were able to claim two seats, and the remaining seat went to an independent candidate claiming support from both.

63. In 1964, the Seychelles Islands United Party faded out and two new parties emerged, namely, the Seychelles Democratic Party (SDP) led by Mr. J.R. Mancham and the Seychelles People's United Party (SPUP) led by Mr. F.A. René. About the same time the Seychelles Taxpayers and Producers Association was reorganized into an ostensibly non-political Seychelles Farmers' Association designed to promote and defend the interests of the agricultural community.

64. The main differences between the two parties were reported by Sir Colville Deverell (see below) to be in the accent they placed on the speed of constitutional evolution, and the nature of the ultimate status of Seychelles after a period of self-government. Mr. Mancham, the leader of SDP, advocated a cautious advance and an ultimate relationship with the United Kingdom as close as possible to integration, while Mr. René, the leader of SPUP, initially advocated a rapid, if not immediate, advance to self-government and the early attainment of a status of complete independence.

schools, two of which provided all-age education, three secondary schools and one selective secondary school. In 1965, there were sixty full-time (fifty-ei in 1964) and six part-time (three in 1964) teachers. Selected young teachers sent to the United Kingdom to follow a three-year course leading to a certific in education conferred by the Ministry of Education. More experienced teache are also sent there for further training. In 1965, a senior teacher departed for a year's course. The expenditure on educational services during the yea estimated at £24,561 (an increase of £1,666 over the previous year), or 10.6 per cent of the Territory's total expenditure.

III. CONSIDERATION BY THE SPECIAL COMMITTEE[14/]

Introduction

122. The Special Committee considered Mauritius, Seychelles and St. Helena at its 535th to 539th meetings held away from Headquarters, between 15 and 19 June 1967. The Special Committee had before it the report of Sub-Committee I concerning these Territories (A/AC.109/L.398), which is annexed hereto.

A. Written petitions and hearings

123. The Special Committee had before it a written petition concerning Mauritius from Mr. A.H. Dorghoty, Second Secretary, Mauritius People's Progressive Party (MPPP) (A/AC.109/PET.689). It heard a petitioner concerning that Territory, Mr. T. Sibsurun, Secretary-General, MPPP, accompanied by Mr. Dorghoty.

124. Mr. Sibsurun (MPPP) recalled that more than fourteen months had elapsed since the Special Committee's meeting at which certain resolutions and recommendations had been adopted and it had been decided that the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples, should be reaffirmed. The most important of the recommendations were those to the effect that the administering Power should be urged to allow the population of the three Territories to exercise their right of self-determination without delay, constitutional changes being left to the people of the Territories themselves who alone had the right to decide on the form of government they wished to adopt; that free elections on the basis of universal adult suffrage should be conducted as soon as possible; and that the administering Power should be called upon to respect the islands' territorial integrity and ensure that they were not used for military bases.

125. The United Kingdom Government had not made the slightest effort to accede to the people's demands. In March 1966, he had stressed to the Special Committee the

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14/ This section includes those portions of the statements made on Mauritius, Seychelles and St. Helena in the Special Committee which relate to the question in general; those portions which refer specifically to the draft resolution are included in section IV. It should be noted that additional comments on the question of Mauritius, Seychelles and St. Helena were contained in the statements made at the opening of the Special Committee's meetings at Kinshasa, Kitwe and Dar es Salaam. These statements are included in chapter II of the Special Committee's report (A/6700 (Part II)).

prevalence of bribery and corruption by the imperialists during the pre-election period. Under Mauritian law, a candidate was allowed to spend up to about Rs.5,000 on his electoral campaign but in most cases vast sums were lavished on canvassing votes, and he had pointed out that the Government should take steps to ensure that the law was respected. The general election was to be held in September 1967 and nothing had yet been done by the Government to enforce such law. History was obviously repeating itself and the poor people who were asking for nothing more than their rudimentary rights were being exploited.

126. He had asked at the same time that supervisors from African and Asian countries should be sent to conduct the general election but, in September 19[illegible] before the United Nations had had time to appoint them, the United Kingdom had dispatched observers from Commonwealth countries to supervise the registration of voters and the general election. It was evident that they would only be able to observe and could not investigate the true situation.

127. At the International Conference against War Danger, Military Pacts and [illegible] Atomic Weapons and Colonialism, resolutions had been adopted calling for immediate and unconditional independence for Mauritius, with an immediate general election and moral, material, technical and financial support for a major propaganda campaign to rid Chagos Island of the nuclear military bases installed by the United Kingdom and the United States.

128. In February 1967, at its eighth session, the Council of the Afro-Asian Solidarity Organization, meeting at Nicosia, had adopted a resolution on Mauritius asking that supervisors should be sent to conduct the general election which would lead to complete and unconditional independence for the island, that the United Kingdom and United States system of direct telecommunications, which had been transferred from Trincomalee to Vacoas, should be dismantled, and that moral support, and material, technical and financial aid should be provided in order to remove the United Kingdom and United States base on Chagos Island.

129. He had intended to ask the United Kingdom representative certain questions but unfortunately he was not there to reply. It would have been interesting to know why the United Kingdom had decided to buy, without the consent of the Mauritian people, what it considered to be its own territory; why the recent Government had connived with the United Kingdom to deprive Mauritius of its dependencies; why the United Kingdom had always rejected, without explanation

all petitions for the holding of a referendum on the military bases. It was obvious that the United Kingdom wanted to grant the island independence, while maintaining a nuclear base on Mauritian soil. The Mauritians had always been a peace-loving people, had never been involved in any world war and did not want their innocent country blasted by a nuclear bomb. In the event of a third world war, Mauritius wished to remain neutral. No country could be truly independent if it remained linked with the great Powers, and the independence obtained years before by their African, Arab and Hindu brothers would also turn out to be illusory. He hoped the world would not witness such injustice without reacting against it.

130. The imperialists presented themselves as champions of human rights and democracy, yet challenged their subject peoples' rights to social, political and economic justice. The colonial countries would not flinch before the imperialists' impressive might and would demand their rudimentary rights.

131. The Special Committee should exercise its power and compel the United Kingdom and the United States to respect its decisions and resolutions. The nuclear base was a direct threat to Africa, Asia and the Middle East and to world peace. United Kingdom and United States experts were already in Mauritius putting the finishing touches to the Chagos Island base. Time was short; the general election was to be held on 17 September 1967 and he hoped the other countries would not turn a deaf ear to Mauritius' justified pleas.

132. The reactionary Government had done nothing for the country; it had introduced illegal and exorbitant taxes to pay for the extension of Plaisance airport to enable it to accommodate the latest jet aircraft, to enable the Government to pursue its neo-colonialist policy after independence and to erect an imperialist bastion in the Indian Ocean to check the advance of socialism in Africa. It was not surprising, therefore, that without the consent of the people, the same reactionary Government was supporting Israel in its war of aggression against the Arab States. He wondered how long the people of Mauritius were to be ignored.

133. The people had held a grand mass rally on world peace, organized by MPPP, on 11 June 1967, and had urged Prime Minister Wilson to reconsider the question of the Chagos Island base and accede to their demand that a referendum should be held on the matter, pointing out that they wanted to remain neutral in the event of a third world war.

134. In conclusion, he appealed to the Special Committee to ensure that the recommendations of the above-mentioned conferences were implemented.

135. In reply to questions concerning his Party's membership, strength and activities to date, the petitioner stated that MPPP had been formed in 1963 after the last general elections and had been affiliated with the Afro-Asian People's Solidarity Committee at the Moshi Conference. The other parties were the Mauritian Social Democratic Party, the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action. A new Party, the Hindu Congress, had been formed in 1966. MPPP was the only political party to have its own office which were open every day, and a register of members. The other parties had no membership lists and only opened their offices for the election campaign. MPPP ha about 50,000 supporters out of a total population of 786,000 and sympathizers among the working class. It would present candidates for the first time at the forthcoming elections.

136. Although not represented in Parliament, MPPP had been actively opposing the Government and holding daily meetings throughout the country to explain to the people the gravity of the situation created by the military bases on the island.

137. When invited to London to discuss the new Constitution, the Mauritian Social Democrat Party, which was in favour of association with the United Kingdom, had dissociated itself from the coalition Government because the other parties represented wanted independence, although they were also in favour of retaining the military bases. In 1965, the Government had sold Chagos Island for £3 millio to the United Kingdom, which, in conjunction with the United States, was building a military base on it. The United Kingdom now denied buying the island outright, saying that the money had merely been given as compensation.

138. MPPP attended not only the meetings of the Special Committee but also international conferences throughout the world, for instance, the New Delhi Conference on War Danger in November 1966 and the Afro-Asian Council in Cyprus i February 1966. On 11 June 1967, it had asked the Mauritian people to attend a mass rally in favour of peace, especially in Viet-Nam, the dismantling of the military base and unconditional independence for their country.

139. Asked to supply more details concerning the size, number and type of bases and the use made of them, the petitioner regretted that he was unable to state t exact size of the bases. The base at Vacoas was used to house the direct

telecommunications system which had been transferred from Trincomalee. The United States Government was providing funds to enlarge Plaisance airport so that jet aircraft could land there. The United Kingdom had always realized the strategic importance of Mauritius; it had taken the bases from France and had granted independence to the country only on condition that it could continue to use the key bases in the Indian Ocean. During the past year the United States Air Force had been using Plaisance airport continuously. It had also been reported in the newspapers and confirmed by the United Kingdom itself that the United Kingdom and United States navies would continue to use the naval bases in Mauritius.

140. The petitioner was asked whether or not the administering Power was implementing the United Nations decisions, and whether he was in a position to give details regarding the establishment of a base by the United Kingdom and the United States on Mauritius. Replying, he stated that the United Kingdom had not implemented the 1966 resolution any more than it had many others adopted by the United Nations. The construction of the military bases was well advanced under the supervision of experts from the United Kingdom and United States, who were to stay until the completion of the bases.

141. In reply to a further question, the petitioner said that the election was to be held on 17 September 1967. The Prime Minister, fearing trouble in a multiracial country, had asked the United Kingdom to send troops as well as observers to supervise the general election. The opposition was divided into too many small parties and did not present a united front. Although all were in favour of complete independence, some were willing to retain the military bases, whereas MPPP demanded that independence should be unconditional. The Mauritian Social Democrat Party, on the other hand, wanted a continued association with the United Kingdom.

B. General statements

142. At the 536th meeting, the Chairman of Sub-Committee I (the representative of Ethiopia), presenting the Sub-Committee's report on Mauritius, Seychelles and St. Helena, (see annex) said that the Sub-Committee had considered the situation in these Territories during the period 5 April to 10 May 1967. In accordance with the procedure agreed upon by the Special Committee, the United Kingdom representative had participated in the Sub-Committee's consideration of the three Territories.

143. The Sub-Committee had been guided by paragraph 16 of General Assembly resolution 2189 (XXI) of 13 December 1966, which requested the Special Committee "to pay particular attention to the small Territories and to recommend to the General Assembly the most appropriate methods and also the steps to be taken to enable the populations of those Territories to exercise fully the right to self-determination and independence". The Sub-Committee had also taken into account paragraph 15 of the resolution which invited the Special Committee "whenever it considers it appropriate to recommend a deadline for the accession to independen to each Territory in accordance with the wishes of the people and the provisions of the Declaration". Further, the Sub-Committee was aware that, as recognized b the Special Committee in paragraph 322 of chapter I of its 1966 report (A/6300 (Part I)) "their small size and population as well as their limited resources presented peculiar problems". However, the Sub-Committee was firmly of the opin that the provisions of the Declaration were applicable to those Territories, and had examined the situation there within that context.

144. The report of the Sub-Committee consisted of four chapters. The Chairman drew special attention to the conclusions and recommendations of the report, contained in paragraphs 124 to 129 and paragraphs 130 to 139, respectively. The report had been adopted by the Sub-Committee at its 39th meeting on 10 May 1967. The representative of Finland had stated that since certain parts of the conclusions and the recommendations were not in accord with and did not reflect the views expressed by his delegation, it could not support all the conclusions and recommendations.

145. The representative of India said that the Indian delegation had carefully studied the valuable and instructive report of Sub-Committee I. It unreservedly supported its conclusions and recommendations and congratulated the Sub-Committe

146. His delegation deeply regretted the slow progress towards the self-determination and independence of the Territories in question. In spite of repeated appeals, the administering Power had not taken steps to expedite decolonization. Progress in the Seychelles and St. Helena had been particularly slow. He hoped that the United Kingdom Government would respect the people's wishes and grant them the political status of their choice without further dela

147. The United Kingdom Government's policy with regard to Mauritius was to del independence as much as possible. For several years much had been heard of impending independence, but the United Kingdom Government had found one pretext

another to postpone the inevitable, giving the impression that it found parting with that rich colony extremely difficult. The Constitutional Conference had been held as early as September 1965, yet the country was not expected to become independent until about the middle of 1968. That long interval seemed totally unjustified. Considerable time had been wasted by the appointment of the Banwell Commission, whose recommendations had been unacceptable to the Mauritian political parties. They had had to be modified substantially following Mr. Stonehouse's visit, thus wasting more than six months. The electoral system under the modified Banwell proposals seemed unduly complicated; if, however, it was acceptable to the political parties in the island, his delegation would respect it, its only desire being that the people of Mauritius should become independent without further delay.

The independence of Mauritius was essential not only for the emotional satisfaction of its people but also to enable them to devote their energies to raise their level of living. Without political independence real economic progress was impossible. Colonial Powers were not interested in doing anything for the people of their colonies that would not at the same time be in their own strategic or other interests. Mauritius provided an excellent example of that policy. It had an economy almost wholly dependent on the production and export of sugar. The United Nations had been urging the administering Power since 1964 to take effective measures to diversify the economy, but the United Kingdom Government's only response had been to take some half-hearted and haphazard steps without really trying to work out a well-co-ordinated programme. Its failure to develop other sectors of the economy had resulted in shortage of capital, a downward trend in per capita income and increased unemployment. The little progress that had been achieved had been due mainly to the efforts of the Government of Mauritius headed by Premier Ramgoolam, who was reported to have said that Mauritius was a viable country which had never needed a grant-in-aid to balance its budget. His delegation had no doubt that, once the country achieved its independence, progress in the diversification of its economy would be accelerated.

The administering Power in Mauritius, as in other colonies, such as Fiji, had been taking advantage of the differences in the Territory in order to maintain its dominant position and protect foreign vested economic interests. Fortunately, the different communities had successfully resisted the administering Power's attempt to divide them. They had realized that their common interest lay in

ridding themselves first of the colonial administration. His delegation wished Mr. Ramgoolam and his associates all the success they deserved in leading their country to independence as a unified nation.

150. His Government had been greatly perturbed at the reports of the establishment of military installations in the "British Indian Ocean Territory" that had been created artificially by detaching certain islands from Mauritius and Seychelles. That was a clear violation of General Assembly resolutions 2066 (XX) and 2232 (XXI) which asked the administering Power not to take any action that would dismember the Territory or violate its territorial integrity. Such dismemberment was also a clear violation of paragraph 6 of General Assembly resolution 1514 (XV) and of the United Nations Charter. The creation of the new colony also ran counter to the declared wishes of the peace-loving peoples of Africa and Asia and must be regarded as contrary to the interests of those peoples in the immediate vicinity of the military installations. In that connexion, he quoted from a statement made by the Indian Minister for Foreign Affairs in Parliament on 6 April 1967, as follows:

> "The Indian Government's position has been made clear in the past and there is no change in our stand. We have subscribed to the Bandung Declaration of 1955. We have also signed the Cairo Declaration of 1964 on the subject of establishment of bases in the Indian Ocean and we stand by them.
>
> "We have also subscribed to resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 20 December 1966 adopted by the United Nations General Assembly, dealing with this subject. Resolution 2066 (XX) 'notes with deep concern that any step by the Administering Power to detach certain islands from the territory of Mauritius for the purpose of establishment of military bases would be in contravention of resolution 1514 (XV)'. It further invited 'the administering Power to take no action which would dismember the territory of Mauritius and violate its territorial integrity'.
>
> "We are opposed to the establishment of military bases in the Indian Ocean area as it might lead to an increase in tensions in this region. We hope that in the largest interest of peace, the British authorities will bear in mind our feelings and feeling of the countries in this region and desist from setting up a military base in this area."

151. The representative of Poland expressed his appreciation of the work of Sub-Committee I and, in particular, of the concise and objective manner in which its report was drafted. He also thanked the Sub-Committee's Chairman for her able presentation of the report.

152. In all three Territories, progress towards the implementation of General Assembly resolution 1514 (XV) had been extremely slow. Though almost seven years had elapsed since the adoption of the Declaration on decolonization, the people of Mauritius, Seychelles and St. Helena had not yet achieved the objectives sought by the United Nations, and the administering Power was still delaying the transfer of authority to the democratically elected representatives of the peoples of the three Territories.

153. As pointed out in paragraph 125 of the report, the United Kingdom, through the Governor, continued to exercise vast powers, particularly in the constitutional and legislative fields. Contrary to General Assembly resolution 1514 (XV), the administering Power was insisting on an even longer constitutional process in Seychelles than in Mauritius on the pretext that the people lacked political expérience. In Mauritius, the elections had still not been held and the United Kingdom Government, though well aware of the people's wishes for independence, was attaching conditions to the granting of it: e.g., that there should be an interval of six months between self-government and independence, and that the demand for complete independence should be reiterated by the vote of a majority elected at the future general elections to be held under complex and controversial electoral arrangements.

154. Furthermore, the United Kingdom was openly violating the principles of the United Nations Charter and the General Assembly resolution by dismembering Mauritius and the Seychelles for military purposes, with the help of the United States. The Polish delegation fully shared the concern expressed by the Special Committee at the establishment in 1965 of a new colony - the "British Indian Ocean Territory" - and at reports that it would be used as a military base. In resolutions 2189 (XXI) and 2232 (XXI), the General Assembly reiterated its earlier declaration that any attempt to disrupt the national unity and territorial integrity of colonial Territories or to establish military bases or installations there was incompatible with the United Nations Charter and with resolution 1514 (XV). Despite the warning of the non-aligned countries at the Cairo Conference in 1964 that such military bases would create tension and would be used to bring pressure against independent States in their vicinity and against national liberation movements, the United Kingdom had refused to give any assurance that the islands detached from Mauritius and Seychelles would not be used under any circumstances

for military purposes. The Polish delegation firmly endorsed paragraphs 126 and 127 of the report of the Sub-Committee and strongly believed that the attitude of the United Kingdom was incompatible with its obligations as the administering Power.

155. The data contained in the Secretariat working paper (see paragraphs 1-121 above) clearly indicated the administering Power's failure to diversify the economies of the three Territories, which were still dependent on a single crop, and, to an increasing extent, on external aid. Mauritius had to import 90 per cent of its needs for essential goods and foodstuffs. It was also clear from the document that unemployment was increasing in Mauritius and Seychelles and that the per capita income in those Territories was tending to fall.

156. In the Polish delegation's opinion, the administering Power should take vigorous measures to assist the peoples of those Territories by grants-in-aid and development programmes to diversify their economy and create employment and opportunities for the growing populations. It should likewise take steps, without further delay, to ensure that the peoples of those Territories achieved independence in the best possible conditions.

157. The representative of Bulgaria said that his delegation had studied the report very carefully and associated itself with the conclusions and recommendations. He expressed his appreciation of the valuable work performed by the Sub-Committee. The administering Power was continuing without restraint to use the Territory for its own requirements, to behave as its undisputed colonial master, to disregard completely the inalienable rights of its population to freedom and independence, to exploit their natural resources, to dismember the Territories and to establish military bases with the participation of another great Power.

158. It was unbelievable that, seven years after the adoption of General Assembly resolution 1514 (XV), the colonial Power could show such complete disregard for its provisions and for the United Nations as a whole. Bulgaria shared the concern of the neighbouring nations which considered the military bases established on the Territories to be detrimental to their security and were demanding the dismantling of all military installations and the discontinuance of military activity.

159. The representative of Madagascar said that he had carefully studied the report of Sub-Committee I on Mauritius, Seychelles and St. Helena. His delegation

like the Sub-Committee, considered that the provisions of General Assembly resolution 1514 (XV) should be speedily implemented in those Territories. Indeed, it had already supported in the Committee many of the ideas and principles set forth in the Sub-Committee's report. Madagascar, in view of its geographical situation, was certainly the country which was closest to Mauritius, a fact which had enabled it to maintain normal and cordial relations with that Territory. His delegation was particularly well placed to speak of the situation now prevailing in that island. It had noted the statements made by the United Kingdom representative in Sub-Committee I and had been pleased to learn that the United Kingdom Government had taken the necessary steps to enable the people of Mauritius, Seychelles and St. Helena to exercise their right to self-determination and independence. The statements of the United Kingdom representative were in accord with the actual facts in the three Territories concerned. The Malagasy delegation therefore welcomed the attitude of the United Kingdom regarding the islands in the Indian Ocean, and could not support all the conclusions and recommendations contained in the report of Sub-Committee I.

160. The representative of Finland said that, as a member of the Sub-Committee, he had already had the opportunity of expressing his Government's views on Mauritius, Seychelles and St. Helena. As he had said in the Sub-Committee on 13 April 1967, although the three Territories might have certain elements in common, there were striking differences between them in many important respects and it was difficult to visualize any common pattern for their future. He had added that Mauritius was well on the road towards full independence. That view had been substantiated by the Mauritian Prime Minister's statement of 13 May 1967 that elections would take place at the very latest before the end of September of the current year. The political development of the Seychelles seemed to be somewhat slower and it seemed not unlikely that some form of special constitutional arrangements might be advisable in the interim.

161. He re-emphasized that, whatever future course might be chosen by the three Territories, it was essential that the final choice should be made by the freely elected majority. Although there had been some regrettable delays, it appeared to him that the majority of the people in question had, in fact, the opportunity of deciding the future of their own countries.

162. A number of the conclusions and recommendations contained in the Sub-Committee's report were not in accordance with the views his delegation had expressed in the Sub-Committee, nor did they accurately reflect the progress towards self-determination which had taken place in the Territories in question.

163. The representative of Italy said that his delegation had not only examined with great care the report of Sub-Committee I, but had followed with close attention the political development of the Territories in question. It had noted with great satisfaction that significant steps had been taken to ensure for their populations the right and the means freely to express their preferences concerning their future status. In the case of Mauritius, it was noteworthy that the Prime Minister intended to organize elections not later than the end of September 1967.

164. Italy's chief concern was that the people of the islands should have the right to determine their future status by democratic means, and such appeared to be the case. Under the circumstances, he viewed with some misgivings the conclusions contained in the report which did not seem to coincide with his delegation's assessment of the situation.

165. The representative of Venezuela said that he had studied with interest the report of Sub-Committee I on the question of Mauritius, Seychelles and St. Helena. Unquestionably, the report gave a very complete account of the political, economic and social conditions prevailing in those three Territories. His delegation was in general agreement with the recommendations and conclusions of the Sub-Committee.

166. He did not, however, share the view expressed in paragraph 127 of the report concerning military bases and installations. There was insufficient proof of the existence of such bases to warrant the claim that they created international tension and aroused concern in neighbouring countries. Nor could it support paragraph 137 of the report, in which the Sub-Committee prejudged the question of future military activities and claimed that they would constitute an act of hostility towards the peoples of Africa and Asia and a threat to international peace and security.

167. The representative of the United States of America said that he wished to comment on the sweeping and unsubstantiated statements made by a petitioner and some representatives with respect to his country. He wished to state categorically that his country had no plans to construct military bases in the British Indian Ocean Territory. In that connexion, he pointed out that a United Kingdom

spokesman had recently given a similar assurance. Although there was an agreement between his country and the United Kingdom to permit the utilization of the British Indian Ocean Territory for refuelling or communications facilities, no decision had been taken to establish any such facilities.

168. The representative of the United Republic of Tanzania said that his delegation had no intention of disputing the statement made by the United States representative. He wished, however, to know whether the statement had the approval of the United Kingdom also. Had it in fact been made on behalf of that country?

169. The representative of the United States of America replied that he had made no statement on behalf of the United Kingdom; he had simply referred to a similar statement made by a United Kingdom spokesman.

IV. ACTION TAKEN BY THE SPECIAL COMMITTEE

170. The representative of Ethiopia introduced a draft resolution (A/AC.109/L.411/Rev.1) on the three Territories co-sponsored by Afghanistan, Ethiopia, India, Iraq, Mali, Sierra Leone, Syria, Tunisia, the United Republic Tanzania and Yugoslavia.

171. The draft resolution was based on the report of Sub-Committee I (see ann and expressed the serious concern felt by the co-sponsors at the fact that, a stated in paragraph 124 of the report, the administering Power had still not implemented General Assembly resolution 1514 (XV) and other relevant resoluti concerning Mauritius, Seychelles and St. Helena. The co-sponsors urged the administering Power to expedite the process of decolonization in those Terri

172. The representative of Iraq said that he seconded the draft resolution a urged all members of the Special Committee to vote for it. He drew attentio the operative paragraph concerning military bases which the administering P in co-operation with the United States, was proposing to establish in Mauriti Seychelles which constituted a serious threat to the area, to the peace and of Africa, Asia and the Middle East and to the national liberation movement operating in those areas.

173. The representative of Poland said that while his delegation supported draft resolution in general, it regretted that the preambular paragraphs co no reference to the Sub-Committee's concern that the administering Power w continuing to violate the territorial integrity of the Territories and to General Assembly resolutions 2066 (XX) and 2232 (XXI) and that the steps t taking in the economic and social sectors to safeguard the interests of th peoples of the Territories were inadequate.

174. At the next meeting, the representative of Ethiopia submitted on beh the co-sponsors, an oral revision to the draft resolution (A/AC.109/L.41 in which in operative paragraph 7, the phrase "to dismantle such military installations" was replaced by the phrase "to desist from establishing su military installations". The co-sponsors considered that the revision (A/AC.109/L.411/Rev.2) would make it quite clear that the resolution als to existing military bases.

175. The representative of Bulgaria said that the draft resolution submitted by the African and Asian countries and Yugoslavia reflected the main recommendations of the Sub-Committee's report and contained the necessary requests to the administering Power to implement fully the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Bulgarian delegation had hoped that the original draft resolution would contain a reference such as that included in the Sub-Committee's report to the activities of the United Kingdom and to the demands addressed to it by the United Nations. It was therefore pleased that the sponsors had accepted the amendment proposed by the Polish delegation to include a new introductory paragraph to express the Special Committee's deep regret that the administering Power had failed to implement resolution 1514 (XV). The General Assembly should pay particular attention to that matter and his delegation thought that, before the opening of the twenty-second session, the Special Committee should have another opportunity to examine the attitude of the administering Power. That had probably also been the sponsors' reason for drafting paragraph 8, requesting the United Kingdom to report to the Special Committee on the implementation of resolution 1514 (XV).

176. The representative of the Ivory Coast said that he would have preferred, as a representative of an African country, not to make any comment on a draft resolution submitted by the Afro-Asian group, which regarded colonialism as a kind of cancerous tumour in the centre of Africa. His delegation was ready to give its full support to the Special Committee's efforts to deal with the last vestiges of the crumbling colonial system. The climate in the Special Committee must be such that all representatives without exception, and particularly the members of the Afro-Asian group, could associate themselves with the Committee's decisions, decisions which, in a general way, expressed the desire of all to help the peoples of the remaining dependent territories. Such a spirit of co-operation and understanding was the vital factor which would enable the Committee to obtain the results expected of it.

177. His delegation would therefore have liked to be among the sponsors of the draft resolution, which, as a whole, reflected the aspirations of the international community as expressed in the basic resolution of the General Assembly,

resolution 1514 (XV), on the granting of independence to colonial countries and peoples. Regrettably, however, it had been unable to join the sponsors because its request for a compromise on operative paragraph 7 relating to military installations had been rejected. The statement appearing in that paragraph was not necessarily in accordance with the facts. Moreover, even if bases existed in certain dependent countries, it was for those countries, when they obtained independence, to negotiate the removal of the bases with the former administering Power, as had happened in all the African countries which had become independent. The question was within the exclusive competence of the countries concerned. The Ivory Coast, which had subscribed to the doctrine of non-intervention in the internal affairs of States, could not go back on the principles which it had endorsed and to which it intended to remain loyal.

178. There should be no misunderstanding of the significance of that reservation, for the Ivory Coast, which had fought against colonialism for many long years and would continue to do so, remained faithful to the principles of decolonization. It was aware that military activities created tensions in the world. It understood the concern of certain delegations and respected their position. The purpose of the Special Committee, however, was to promote decolonization, and it should make sure that its decisions could be applied. It should seek the most objective way of bringing the countries under foreign domination to self-determination and independence and not choose courses which, on the contrary, would tend to harden positions and delay the solution of the problem of decolonization. The Ivory Coast delegation, while expressing reservations on operative paragraph 7, supported the other provisions of the draft resolution and would vote for it.

179. The representative of Italy said that operative paragraph 7 of the draft resolution was extraneous to the colonial issue and involved considerations outside the Special Committee's purview. His delegation would, therefore, abstain from voting.

180. The representative of Venezuela noted with regret that the draft resolution did not take into account the recommendation of Sub-Committee II that the General Assembly should set a time-limit for the granting of independence to Mauritius and accelerate the implementation of resolution 1514 (XV) in respect of Seychelles and St. Helena. There was no reference either to the recommendation concerning the

sending of a visiting mission to the Territories to ascertain the extent of the progress made in the direction of self-determination and independence. Although his delegation would have preferred a text which took greater account of realities, it would nevertheless vote for the draft resolution.

181. The representative of Chile said that he approved of the general lines of the draft resolution despite certain doubts about the wording. Although the language was somewhat exaggerated, his delegation was, nevertheless, able to support the draft resolution as a whole, in line with its constant policy of supporting any measures designed to further the implementation of General Assembly resolution 1514 (XV), irrespective of the size of the Territory concerned or its distance from world markets. The latter considerations could not, however, be entirely overlooked.

182. The representative of the United States of America said that he intended to vote against the draft resolution which did not constitute a realistic and balanced appraisal of the situation in the Territories in question. The issue of Mauritian independence would be decided in the coming elections to be held this fall. If the population desired independence, it was possible that the Territory would become independent in early 1968. The Seychelles were also moving steadily and impressively in the direction of self-determination. Despite, therefore, his delegation's full approval of operative paragraph 2 of the draft resolution, he was unable to accept later operative paragraphs which were not consistent with the actual situation. It also had reservations concerning the Sub-Committee's report.

183. At its 539th meeting the Special Committee adopted the draft resolution (A/AC.109/L.411/Rev.2) as orally revised, by a roll call vote of 17 to 2 with 3 abstentions, as follows:

In favour: Afghanistan, Bulgaria, Chile, Ethiopia, India, Iran, Iraq, Ivory Coast, Mali, Poland, Sierra Leone, Syria, Tunisia, Union of Soviet Socialist Republics, United Republic of Tanzania, Venezuela, Yugoslavia.

Against: Australia, United States of America.

Abstaining: Finland, Italy, Madagascar.

184. The representative of Australia said, in explanation of his vote, that the normal approach in such a matter would have been to ask the administering Power to explain anything that was not readily apparent in current developments. Not

only had no such approach been made, but a statement by a representative of the administering Power had been completely ignored as had the many practical steps which had been taken in the direction of independence for the Territories in question. Self-determination meant that a Territory was perfectly entitled to decide, by a majority vote, whether or not it desired independence. Operative paragraph 7 was completely unacceptable, especially in view of the statements that had been made by representatives of the Governments of the United Kingdom and the United States that there was no intention of establishing military installation on the island. Appeals had been launched to the administering Power to grant immediate independence to the Territories on the principle of "Heads I win; tails you lose". If immediate independence were granted, without proper preparation, the administering Power would be blamed. That gambling attitude was not one which should be adopted where the future of nations and populations was at stake. Under the circumstances, his delegation had had no alternative but to vote against the draft resolution.

185. The representative of India remarked he had been both surprised and disappointed that the delegations of Australia and the United States had voted against the draft resolution. He failed to realize what they had found in the text so obnoxious that they were forced to vote against it. It had reaffirmed the inalienable right of the peoples of those Territories to self-determination, freedom and independence; it had urged the administering Power to hold free elections and to grant to the Territories whatever political status their peoples should freely choose. It had deplored any dismemberment of the Territories and had declared that the establishment of military installations would be a violation of General Assembly resolution 2232 (XXI). He failed to understand that anything in those provisions could cause a freedom-loving country to vote against the resolution.

186. He particularly regretted the unfortunate "gambling" analogy used by the representative of Australia. The sponsors of the draft resolution had made a serious appraisal of the problems facing those Territories and he deplored the fact that the attitude of responsible representatives of responsible Governments should be described as "gambling".

187. The Chairman added that he was deeply disappointed that the Australian representative should have used such an analogy, after all the work that Sub-Committee I had put into its report. It was regrettable that the administering Power had seen fit to be absent from the Special Committee's deliberations, but that did not justify the use of such intemperate language.

188. The representative of the United States of America said he had made a statement explaining his vote and had been very much surprised by the unprecedented request of India for further explanation. He considered that the statement he had already made fully explained the position of his delegation and Government.

189. The representative of Yugoslavia said that some representatives had explained their abstentions on or opposition to the draft resolution on the grounds of operative paragraph 7. It was denied that either the United States or the United Kingdom had any intention of establishing such bases. In that connexion, he pointed out that The New York Times had reported a story to the effect that the United Kingdom was in the final stages of negotiations to purchase three islands in the Indian Ocean for defence purposes. Another paper had stated that the United States and the United Kingdom were planning to build an airstrip on one of those islands. Those two articles constituted sufficient proof for his delegation that the two Powers in question were intending to construct a military base and that operative paragraph 7 was fully justified.

190. The representative of Mali thanked all who had voted for the draft resolution which was directed towards speeding the process of decolonization in a particularly sensitive region of the world. He regretted that cold war considerations should have been introduced and he associated himself with the statements of the Chairman and the representatives of India and Yugoslavia. He was surprised that colonial Powers which claimed to support the Declaration on the Granting of Independence to Colonial Countries and Peoples should change their attitude when it came to taking concrete measures to give effect to that Declaration. He was particularly astonished by the words of the representative of Australia, a country which had exterminated its indigenous inhabitants and was sending troops to Viet-Nam to prevent the people of that country from enjoying their most elementary rights.

191. The representative of the United States of America said, in reply to the representative of Yugoslavia, that, excellent paper though it was, The New York Times was not an official organ of the United States Government and its reports in no way reflected the policy of his Government.

192. The representative of the United Republic of Tanzania said that the vote against the draft resolution by two delegations had demonstrated, beyond all reasonable doubt, the true position of their countries and their attitude towards the principle of self-determination. In view of the repeated statements by representatives of the United States Government that their country supported the cause of decolonization, that vote had come as a disagreeable surprise. As the representative of the United States had referred to the "British Indian Ocean Territory", he pointed out that the United Nations had refused to recognize that Territory, the establishment of which was no more than a colonialist manoeuvre.

193. The representative of Australia, exercising his right of reply to the representative of Mali, explained that his reference to gambling had been a strictly personal reaction. He had not meant to suggest that the Sub-Committee or the Special Committee approached its work in the spirit of a gambler. The representative of Mali had also referred to the indigenous inhabitants of Australia. That was a matter within the domestic jurisdiction of the Australian Government. Although Australia could not claim that it had no reason for self-reproach, the indigenous inhabitants were not being assassinated as the representative of Mali had stated. He added that the question of Viet-Nam was not within the Special Committee's terms of reference.

194. The text of the resolution on Mauritius, Seychelles and St. Helena (A/AC.109/249), adopted by the Special Committee at its 539th meeting on 19 June 1967 reads as follows:

"The Special Committee,

"Having examined the question of Mauritius, Seychelles and St. Helena,

"Having heard the statement of the petitioner,

"Noting with regret the absence of the representatives of the administering Power,

"Noting with deep regret the failure of the administering Power to implement General Assembly resolution 1514 (XV) of 14 December 1960,

"Having examined the report of Sub-Committee I concerning these Territories, 15/

"Recalling General Assembly resolution 1514 (XV) of 14 December 1960, and other relevant resolutions concerning Mauritius, Seychelles and St. Helena, in particular General Assembly resolutions 2066 (XX) of 16 December 1965 and 2232 (XXI) of 20 December 1966,

"1. Approves the report of Sub-Committee I concerning Mauritius, Seychelles and St. Helena and endorses the conclusions and recommendations contained therein;

"2. Reaffirms the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination, freedom and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"3. Urges the administering Power to hold, without delay, free elections in the Territories on the basis of universal adult suffrage and to transfer all powers to the representative organs elected by the people;

"4. Further urges the administering Power to grant the Territories the political status their peoples freely choose and to refrain from taking any measures incompatible with the Charter of the United Nations and with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"5. Reaffirms that the right to dispose of the natural resources of the Territories belongs only to the peoples of the Territories;

"6. Deplores the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI), and calls upon the administering Power to return to these Territories the islands detached therefrom;

"7. Declares that the establishment of military installations and any other military activities in the Territories is a violation of General Assembly resolution 2232 (XXI), which constitutes a source of tension in Africa, Asia and the Middle East, and calls upon the administering Power to desits from establishing such military installations;

"8. Requests the administering Power to report on the implementation of the present resolution to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"9. Decides to maintain the question of Mauritius, Seychelles and St. Helena on its agenda."

15/ See annex.

Annex 63

Official Records of United Nations General Assembly, Twenty-Second Session, 1641st Plenary Meeting, 19 December 1967, 3 p.m., UN Doc. A/PV.1641

United Nations
GENERAL ASSEMBLY
TWENTY-SECOND SESSION
Official Records

1641st PLENARY MEETING

Tuesday, 19 December 1967, at 3 p.m.

NEW YORK

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President: Mr. Corneliu MANESCU (Romania).

In the absence of the President, Mr. El Bouri (Libya), Vice-President, took the Chair.

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TERRITORIES NOT CONSIDERED SEPARATELY

*Resumed from the 1636th meeting.

REPORT OF THE FOURTH COMMITTEE (A/7013)

Mr. Dashtseren (Mongolia), Rapporteur of the Fourth Committee, presented the reports of that Committee and then spoke as follows:

1. Mr. DASHTSEREN (Mongolia), Rapporteur of the Fourth Committee: The first report [A/7009] of the Fourth Committee concerns the report of the Trusteeship Council [A/6704], which the Fourth Committee took up under agenda item 13. In its report, the Fourth Committee recommends that the General Assembly adopt two draft resolutions: draft resolution I, concerning the Trust Territory of Nauru, and draft resolution II, concerning Papua and the Trust Territory of New Guinea [A/7009, para. 15].

2. With respect to the future composition of the Trusteeship Council, the Fourth Committee, on the proposal of the Chairman, decided to recommend to the General Assembly [ibid., para. 14] that it should take note of paragraphs 10-15 of the special report of the Trusteeship Council on its thirteenth special session [A/6926].

3. The second report [A/7010] concerns the special training programmes and their consolidation, which the Fourth Committee took up under agenda items 65, 67 and 68. In this report, the Fourth Committee recommends that the General Assembly adopt a draft resolution [ibid., para. 8], by which it would decide:

> "to integrate the special educational and training programmes for South West Africa, the special training programme for Territories under Portuguese administration and the educational and training programme for South Africans".

4. The third report [A/7011], concerns the question of Fiji, which the Fourth Committee took up under agenda item 69. The Committee recommended to the General Assembly the adoption of a draft resolution [ibid., para. 8] whereby the Assembly would reaffirm "the necessity of sending a visiting mission to Fiji for the purpose of studying at first hand the situation in the Territory".

5. The fourth report [A/7012] related to agenda items 63 and 71, which the Fourth Committee took up together. In this report, the Committee recommends two draft resolutions for adoption by the Assembly: draft resolution I, entitled "Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations" and draft resolution II, entitled "Offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories" [ibid., para. 9].

6. The fifth and final report [A/7013] concerns all the other Territories to which agenda item 23 relates which were not considered separately by the Fourth Committee. As the Territories coming under this item number as many as thirty-nine and include many of the Territories which are either the subject of conflicting claims of sovereignty or of special interest to Member States for geographical, historical, economic or other reasons, extensive debates took place in the Committee concerning those territories.

7. In its report the Fourth Committee recommends that the General Assembly adopt five draft resolutions: draft resolution I, entitled "Question of Gibraltar", draft resolution II, entitled "Question of Ifni and Spanish Sahara", draft resolution III, entitled "Question of Equatorial Guinea", draft resolution IV, entitled "Question of French Somaliland" and draft resolution V, entitled "Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands" [A/7013, para. 39].

8. As will be noted from operative paragraph 1 of draft resolution V, the Assembly would approve the relevant chapters of the report of the Special Committee [A/6700/Rev.1, chaps. XI, XIV to XVIII, XX and XXIII]. In that connexion, I should like to draw attention to the chapter relating to the Territory of Swaziland, which contains a consensus adopted by the Special Committee on 23 October 1967 [ibid., chap. XI, para. 144]. By approving that chapter of the report, the General Assembly would, as recommended in that consensus, decide, inter alia, that, subject to the consent of the donor Governments, the contributions so far made to the Fund established under its resolution 2063 (XX) should be transferred to the General Fund of the United Nations Development Programme in the light of the latter's expectation and desire to provide increased assistance to Botswana, Lesotho and Swaziland.

9. Finally, the Fourth Committee adopted, without objection, a draft consensus concerning the question of the Falkland Islands (Malvinas) [A/7013, para. 40], which it recommends for adoption to the General Assembly.

Pursuant to rule 68 of the rules of procedure, it was decided not to discuss the reports of the Fourth Committee.

10. The PRESIDENT (translated from French): I invite the Assembly first of all to consider the Fourth Committee's recommendations on agenda item 13 [A/7009, para. 15].

11. I shall now call on those representatives who wish to explain their vote, on the understanding that they may refer to draft resolutions I and II in the same statement.

12. Mr. SHAW (Australia): We are now considering the report of the Trusteeship Council [A/6704] under agenda item 13, and I wish to explain briefly the votes which my delegation will cast on the two draft resolutions recommended by the Fourth Committee to this Assembly [A/7009, para. 15].

13. Draft resolution I relates to the Trust Territory of Nauru. Needless to say, my delegation will vote in favour of that draft resolution, which resolves, in agreement with the Administering Authority, that the Trusteeship Agreement for the Territory of Nauru, approved by the General Assembly on 1 November 1947, [resolution 140 (II)], shall cease to be in force upon the accession of Nauru to independence from 31 January 1968.

14. It was the happy duty of the Australian delegation to report, first to the thirteenth special session of the Trusteeship Council [1323rd meeting] and subsequently to the Fourth Committee of the Assembly [1739th meeting], that recent negotiations conducted between the representatives of the Nauruan people and the Administering Authority consisting of the Governments of the United Kingdom, New Zealand and Australia, had led to agreement that Nauru should accede to full and unqualified independence in six weeks' time from now. Further agreements were reached whereby the people of Nauru would obtain complete control and ownership of the phosphate deposits on the island of Nauru. The mined phosphates will be sold at prices determined by estimates of world market prices, which will guarantee a secure economic future for coming generations of Nauruans.

15. In the course of the discussion in the Trusteeship Council, and in the Fourth Committee, the Australian delegation had the advantage of the participation of the outstanding leader of the Nauruan people, Head Chief Hammer de Roburt, who spoke about the future of his island people.

16. Already the 3,000 inhabitants of Nauru have one of the highest living standards in the world and very high educational, social and health standards. Although minute by world standards, Nauru can look forward to a prosperous, and peaceful future. It is a matter of gratification to my Government that, having fulfilled our obligations under the Charter and the Trusteeship Agreement, we should be at the stage of terminating the Trusteeship Agreement for Nauru in these harmonious circumstances. We commend the draft resolution and we trust that it will receive the unanimous support of this Assembly.

17. Draft resolution II contained in the report of the Fourth Committee concerns the question of Papua and the Trust Territory of New Guinea. That draft resolution is unacceptable to the Government of Australia and we will vote against it.

18. Draft resolution II, in short, reaffirms earlier resolutions on Papua and New Guinea, including resolutions 2112 (XX) and 2227 (XXI), and calls upon the administering Power to take the necessary measures to implement without delay the provisions of those resolutions.

19. We have to recall, however, that those earlier resolutions, and in particular 2227 (XXI), adopted a year ago in this Assembly, are based on assumptions which do not accord with the facts. The administering Power was called upon to stop doing certain things which it was not doing. The facts of conditions in Papua and New Guinea are contained in the very full reports of the Administering Authority to the General Assembly, in the discussions in the Trusteeship Council, and in statements made to the Council and to the Fourth Committee of this Assembly by representatives of the Administering Authority. We have explained in those meetings, and we state again now, that certain provisions of last year's resolution could not be implemented simply because they were not based on an accurate description of conditions in the Territory as they actually are.

20. My delegation has been disappointed that the Fourth Committee was unable to take sufficient account of the unique conditions and problems of the Territory and people of eastern New Guinea, which make up the Territory of Papua and the Trust Territory of New Guinea. This is disappointing because a great deal of factual and critical information has been built up in the reports of the Administering Authority and the reports of visiting missions of the Trusteeship Council, which have been submitted for many years past.

21. Resolution 2227 (XXI) which we are asked to reaffirm, calls, inter alia, on the Administering Authority to remove discriminatory electoral qualifications; to abolish discriminatory practices in the economic, social, health and educational fields; to hold elections on the basis of universal adult suffrage, to fix an early date for independence; and to refrain from utilizing the Territories for military activities incompatible with the Charter.

22. One general election has already been held in Papua and New Guinea and preparations are being made for a second general election in February-March 1968. In that election all persons, male or female over the age of twenty-one, will vote in accordance with the principle of "one man, one vote" and a free choice of candidates offering alternative programmes and with the certainty of further free elections in four years' time. All voters of all races are on one common roll. They will elect their House of Assembly according to a similar electoral system to that which applied in Australia, which is regarded as one of the most just and equitable in the world.

23. In the fields of education, public health and social and economic development, we claim that our achievements are such that they can be surpassed in few developing areas anywhere else in the world. We are creating the necessary economic infra-structure indispensable for sound development.

24. So far as concerns the political future of the Territory, the Australian Government is bound by the obligations it has assumed under the Charter and under the Trusteeship Agreement. The people of the Territory are free to terminate their present territory status when they wish to do so—I repeat: the people of the Territory are free to terminate their present territory status when they wish to do so.

25. In this respect, we should remind ourselves that the national society which is now emerging in New Guinea is something which had never previously existed. That society is now expressing itself politically through a range of institutions of representative government, the most important of which is the House of Assembly.

26. Finally, I would refer to the provision of resolution 2227 (XXI) which this Assembly is asked to reaffirm, which called upon the administering Power to refrain from utilizing the Territories for military activities incompatible with the Charter of the United Nations. The assumption on which this call is based is erroneous and unjust. In the Fourth Committee [1745th and 1750th meetings], we explained the very small nature of the military establishments in the Territory, it is the responsibility of the Adminis-

tering Authority to defend the people of the Territory for as long as the Trusteeship Agreement continues, and that obligation we will continue to honour. No reasonable person could describe our present efforts in that direction as anything other than defensive.

27. The Australian delegation will vote against this draft resolution not simply because it makes no acknowledgement of the record and efforts of the Administering Authority. More importantly, we shall vote against it because it fails to take sufficient heed of what is happening in Papua and New Guinea itself, where we are witnessing the creation of a new society and a new national consciousness among a people numbering over 2 million.

28. In view of the importance of this matter to my delegation, I would ask that the vote on draft resolution II concerning Papua and New Guinea should be a roll-call vote.

29. Lord CARADON (United Kingdom): We have two draft resolutions before us [A/7009, para. 15]. The second, in regard to New Guinea, we must oppose; the first, in regard to Nauru, we are happy to support.

30. It is true that the draft resolution on New Guinea merely reaffirms previous resolutions, but those earlier resolutions were, in our view, unacceptable. They disregarded the special complications and peculiar difficulties of the situation in New Guinea. They made accusations unwarranted by the facts. They disregarded the important progress going forward in the Territory. They ignored the generosity and enterprise of the Australians, a pioneer people who rightly take pride in what they are giving and what they are achieving in the advance of New Guinea and Papua towards self-government and self-determination. For these reasons we regard the draft resolution on New Guinea as misconceived and misguided, and we shall vote against it as we have voted against it in the Fourth Committee.

31. We are glad to turn to the other draft resolution, the one on Nauru, which we wholeheartedly support. Together with Australia and New Zealand we welcome the advance of the people of Nauru to full independence. I myself, as Chairman of a United Nations Visiting Mission, had the privilege a few years ago to go to New Guinea and Nauru.

32. Our Visiting Mission had proposals to make on New Guinea which were promptly considered and accepted by the Australian Government. At the same time, we recorded our admiration of the energy and initiative and resource shown by Australia in carrying out its trust.

33. In Nauru we were impressed by the firm determination of a people who set themselves the highest aim and did not hesitate or waver in pursuing it. Now, happily, they have achieved their purpose. To their Head Chief, Hammer de Roburt, and to all those who have worked with him with such devotion and perseverance, we pay our tribute today. We confidently look forward to the maintenance of the friendly relations which have throughout existed between the people of Nauru and the three Governments which carried a triple responsibility on behalf of the United Nations. We wish the people of Nauru well, and we undertake to give them our help and our support in the honourable status which they have now attained.

34. The independence of a small people in a distant island raises unusual problems for the future both for them and for the international community. But I am confident that with their vigour and self-reliance and resources these fine people will show that free government and proud independence are not the privilege of great nations. They will show that they can be equally exercised and enjoyed with honour and advantage by small peoples who have the means and the courage and the confidence to control their own destiny.

35. Mr. LIU CHIEH (China): The Chinese delegation wishes to state briefly its position on the draft resolutions submitted by the Fourth Committee on agenda item 13 [A/7009, para. 15]. My Government has always maintained that it is the inalienable right of the peoples of Non-Self-Governing and Trust Territories freely to determine their own status and shape their own destiny. We have time and again voted in favour of resolutions which are calculated to accelerate the progress of colonial peoples towards self-determination and independence. For this reason, we shall wholeheartedly endorse draft resolution I.

36. We had occasion already to express our congratulations to the people of Nauru on their success in attaining independence, and also to commend the Administering Authorities on their contribution towards the economic, social and political achievement of the Nauruan people.

37. With regard to draft resolution II, we have some reservations. In so far as this draft resolution reaffirms the right of the people of Papua and New Guinea to self-determination and independence we are completely in accord with it. In this connexion we note with particular interest that the basic policy of the Administering Authority for New Guinea is self-determination. The annual report of the Administering Authority itself stated the following in unequivocal terms: "It is the prerogative of the Territory people to determine the present Territory status and take independent status if they wish."1/

38. While we urge the Administering Authority further to stimulate and expedite the process of self-determination, we believe that the pace and direction of political advancement is ultimately a matter for the people of New Guinea to decide. It is also our belief that it is in the interest of our common objective that the United Nations should seek to promote political advancement of Non-Self-Governing peoples in co-operation with the Administering Authority, especially when that Authority is co-operating with the United Nations and is taking the necessary measures in the right direction.

39. As far as New Guinea is concerned, my delegation is mindful of the encouraging constitutional developments that have taken place in recent years.

1/ Commonwealth of Australia, Administration of the Territory of New Guinea, 1 July 1965-30 June 1966. Report to the General Assembly of the United Nations (Canberra: Commonwealth Government Printer, 1967), p. 44.

We have the further assurance now that a new House of Assembly will be elected in 1968 on a more broadly representative basis. We believe that an opportunity should be given to this representative body to determine the future status of the Trust Territory.

40. In the light of these new constitutional developments in the Territory of New Guinea, we are unable to support the present draft resolution.

41. Mr. KANNANGARA (Ceylon): My delegation has asked for the floor to make a brief comment in explanation of its vote as recorded in the report of the Fourth Committee concerning Papua and the Trust Territory of New Guinea [A/7009, para. 13]. In the Fourth Committee [1750th meeting], speaking in explanation of my vote before the vote, I stated the following:

"My delegation will vote for the draft resolution as a whole as it fully supports the inalienable right of the people of Papua and New Guinea to self-determination and the implementation of resolution 1514 (XV).

"My delegation, however, is compelled to abstain on operative paragraph 2. The phrase 'previous position' in that paragraph is far too vague and inconsequential to receive either our consideration or support. These words may imply insidious allegations against or condemnation of the Administering Authority.

"At the 1319th meeting of the Trusteeship Council held on 27 June 1967, the Council, by a vote of 6 to 1, with 1 abstention, rejected an operative clause of a draft resolution condemning the Administering Authority. My delegation fully accepts the findings of the Council."

42. In this connexion, I should add that my delegation also takes note of the findings of the World Bank on the Territory. 2/

43. Due to an impression I had that the representative of Australia had called for a separate vote on paragraph 2, my vote has been recorded in the records of the Fourth Committee as an abstention on the draft resolution as a whole. I should like it recorded that my delegation's vote, there as here, is in the affirmative for the draft resolution as a whole.

44. The PRESIDENT (translated from French): I invite the Assembly to vote on the draft resolution recommended for adoption by the Fourth Committee [A/7099, para. 15].

45. Draft resolution I was adopted unanimously by the Fourth Committee. May I take it that the General Assembly also adopts it unanimously?

Draft resolution I was adopted unanimously [resolution 2347 (XXII)].

46. The PRESIDENT (translated from French): I shall now put to the vote draft resolution II. The representative of Australia has requested a roll-call vote.

The vote was taken by roll-call.

Madagascar, having been drawn by lot by the President, was called to vote first.

In favour: Madagascar, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Niger, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Spain, Sudan, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya.

Against: Netherlands, New Zealand, Norway, Portugal, South Africa, Sweden, United Kingdom of Great Britain and Norther Ireland, United States of America, Australia, Belgium, Canada, China, Denmark, Finland, Iceland, Luxembourg.

Abstaining: Malawi, Malaysia, Maldive Islands, Nicaragua, Singapore, Thailand, Trinidad and Tobago, Austria, Barbados, Botswana, Costa Rica, France, Greece, Ireland, Israel, Italy, Japan, Laos.

Draft resolution II was adopted by 85 votes to 16, with 18 abstentions [resolution 2348 (XXII)].

47. The PRESIDENT (translated from French): I now invite the Assembly to consider paragraph 14 of the Fourth Committee's report [E/7009]. The Committee recommends that the General Assembly take note of paragraphs 10 to 15 of the special report of the Trusteeship Council on its thirteenth special session relating to the composition of the Trusteeship Council [A/6926]. If there are no objections, I shall take it that the General Assembly decides to take note of these paragraphs.

It was so decided.

48. The PRESIDENT (translated from French): The Assembly has now concluded its consideration of agenda item 13.

49. We shall now examine the Fourth Committee's recommendations on agenda items 65, 67, and 68 [A/7010, para. 8].

50. I call on the representative of the Union of Soviet Socialist Republics, who wishes to explain his vote.

51. Mr. SHAKHOV (Union of Soviet Socialist Republics) (translated from Russian): The USSR delegation in the Fourth Committee voted for draft resolution A/C.4/L.891 which is contained in paragraph 8 of the Fourth Committee's report to the General Assembly and is now before us [A/7010], on the question of the consolidation and integration of the special educational and training programmes for South West

2/ International Bank for Reconstruction and Development, The Economic Development of the Territory of Papua and New Guinea (Baltimore, The Johns Hopkins Press, 1965).

Africa, the special training programme for Territories under Portuguese administration and the educational and training programme for South Africans.

52. At the same time, my delegation expressed a number of reservations to the effect that, firstly, the existing programmes, whether they are United Nations programmes or programmes of other institutions or associations, public or private, should not be financed from the integrated United Nations programme to be created by this resolution; and secondly, that all resources to be earmarked for the trust fund for this United Nations Programme should be used exclusively to cover operational costs and not to swell the administrative apparatus for that programme now or in the future. We feel that the administration of the integrated programme to be established pursuant to this resolution should be carried out with the facilities which already exist in the United Nations Secretariat, and that no additional funds should be allocated from the United Nations budget for that purpose.

53. The PRESIDENT (translated from French): I shall now put to the vote the draft resolution recommended for adoption by the Fourth Committee [A/7010, para. 8]. The Fifth Committee has submitted a report [A/7026] on the administrative and financial implications of the adoption of this draft.

The draft resolution was adopted by 113 votes to 2, with 1 abstention [resolution 2349 (XXII)].

54. The PRESIDENT (translated from French): I call on the United States representative, who wishes to explain his vote.

55. Mr. GARCIA (United States of America): The United States delegation has, over the past several years, supported the various resolutions passed by the General Assembly regarding special educational and training programmes for people from South West Africa and Territories under Portuguese administration. Last year, the United States delegation was one of the co-sponsors of the resolution [2235 (XXI)] calling for the consolidation and integration of the special educational and training programmes for these two areas, as well as the educational programmes for South Africa. In so doing, my delegation believed, as it still does, that the people of those areas should be able to avail themselves as much as possible of the wide range of educational facilities offered them.

56. The consolidation of this programme, as provided for in the resolution we have just adopted, has the United States' support because of the broad objectives laid down in securing for the people of these areas as wide an educational opportunity as can be provided. In supporting the broad objectives of the programme, we do so with the understanding that it is of a non-political character and aimed solely at providing the widest possible educational benefits to all those who desire them.

57. We note that in operative paragraph 8 of the resolution, the Secretary-General is authorized to achieve a target of $US3 million over a three-year period in order to finance the activities of the programme. It is our understanding that this paragraph establishes a target figure and that it in no way implies a commitment by any Member as to a contribution.

58. The PRESIDENT (translated from French): Under paragraph 6 of the resolution we have just adopted, the President of the General Assembly is requested "to nominate seven Member States, each of which should appoint a representative to serve on a committee which will advise the Secretary-General on the granting of such subventions". The Chair will announce the names of those States in due course.

59. We shall now consider the Fourth Committee's recommendations on agenda item 69. The Committee has submitted a draft resolution [A/7011, para. 8], the administrative and financial implications of which are dealt with in a report of the Fifth Committee [A/7018].

60. I shall now put to the vote the Fourth Committee's draft resolution. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Argentina, Bolivia, Botswana; Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Laos, Lebanon, Lesotho, Libya, Madagascar, Maldive Islands, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: Australia, New Zealand, Portugal, South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Austria, Barbados, Belgium, Canada, Denmark, Finland, France, Gambia, Guyana, Iceland, Ireland, Israel, Italy, Liberia, Luxembourg, Malawi, Malaysia, Netherlands, Norway, Sweden.

The draft resolution was adopted by 91 votes to 6, with 20 abstentions [resolution 2350 (XXII)].

61. The PRESIDENT (translated from French): The Assembly will now consider the Fourth Committee's recommendations on agenda items 63 and 71. The Committee has submitted two draft resolutions [A/7012, para. 9].

62. I shall now put to the vote draft resolution I.

Draft resolution I was adopted by 114 votes to 2, with 1 abstention [resolution 2351 (XXII)].

63. The PRESIDENT (translated from French): I invite the Assembly to vote on draft resolution II. If there is no objection, I shall take it that the Assembly adopts this draft unanimously.

Draft resolution II was adopted unanimously [resolution 2352 (XXII)].

64. The PRESIDENT (translated from French): The Assembly has now concluded its consideration of agenda items 63 and 71.

65. The last matter for this afternoon concerns agenda item 23. The general debate on this item was concluded on 16 December 1967 with the adoption of resolution 2326 (XXII). The General Assembly must now vote on the draft resolutions of the Fourth Committee relating to territories which were not considered separately [A/7013, para. 39].

66. First, I shall call on those representatives who wish to explain their votes on the various draft resolutions before the voting takes place. Next I shall put these drafts to the vote in the order in which they were submitted by the Fourth Committee, and then I shall call on those representatives who wish to explain their vote after the voting.

67. Since this item has been examined in detail by the Committee, I would request representatives to make their statements as brief as possible.

68. Mr. BOUATTOURA (Algeria) (translated from French): Before the General Assembly votes on draft resolution II on the territories of Ifni and Spanish Sahara, my delegation would like to make a few remarks. In my statement I shall not overstep the traditional bounds of our work, which chiefly consists in seeking and finding solutions to all problems connected with colonialism on the basis of principles generally accepted by the international community.

69. Before explaining its vote, my delegation would like to mention some of the factors which have influenced its attitude. The very title of the item under discussion is misleading, since it gives the impression that the problems it covers are of the same type and that the principles governing the solution of one are automatically applicable to the other. Of course, the colonial aspect of these two situations is the common denominator, and the solution must accordingly be in strict conformity with resolution 1514 (XV). But these two problems—and this has recently been recognized—are essentially different.

70. In the first case, the situation is clear and needs no explanation. In the second, the situation is more complex and intricate, and involves many different phenomena occurring simultaneously.

71. Having said this, my delegation would like to give its views on the two problems the intrinsic difference between which it wished to emphasize before considering them in detail. We feel we are in a good position to do this since we have many affinities with the parties concerned.

72. First, the question of Ifni. We feel that the situation in that Territory is quite clear and readily lends itself to an equitable solution that would be acceptable to both parties. The geography and history of this territorial enclave have given it a character all its own. The Algerian Government has always regarded it as an anachronism that an islet of colonization, which is no longer justified in view of the evolution of the contemporary world, should exist in Maghreb.

73. Certain indications—in particular the Spanish-Moroccan communiqué of 24 September 1967—lead us to believe that a solution is being worked out in accordance with resolution 2229 (XXI), in which the General Assembly requested Spain to recognize the Territory's right to self-determination and "to determine with the Government of Morocco, bearing in mind the aspirations of the indigenous population, procedures for the transfer of powers".

74. My delegation considers that the desire of the two parties to reach an agreement, despite many points of difference, is an important contribution to the cause of decolonization, and we hope that the declarations of intent on the part of the administering Power will speedily become a reality.

75. An equally realistic attitude ought to be adopted in seeking a solution to the problem of so-called Spanish Sahara. We are all aware that any solution to this problem must do more than take into account the interests which have so far been expressed regarding this region. Above all, the factor we must regard as decisive, because it is at the very basis of decolonization, is the freely expressed wish of the population itself. In operative paragraph 4 of resolution 2229 (XXI) the General Assembly invited the administering Power "to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination".

76. The main points of that resolution are contained in the draft resolution now before us. In this connexion, the Algerian Government wishes to reiterate its full support for that resolution because, quite clearly, it contains all the elements needed to speed up the process of decolonization and to maintain peace and harmony in that region, of whose importance everyone is now aware.

77. There is no doubt that the administering Power and the parties concerned are being asked to perform a very delicate operation. We are, however, encouraged by the fact that what has been done so far should facilitate a strict application of this draft resolution and that no new element has arisen to jeopardize such application.

78. At this stage, my delegation would like very briefly to restate its position with regard to a Territory which borders on three distinct political entities, including Algeria, which has always had so many ethnic, economic and cultural ties with it.

79. The interest shown by Algeria in the problem of so-called Spanish Sahara has been dictated by considerations of equity, balance, peace and stability, and also by a desire to maintain good neighbourly relations in accordance with international ethics. The future peace of the region depends, to a large extent, on the success or failure of decolonization. That is why my country regards the draft resolu-

tion as the cornerstone of a policy of harmonious development among the States of that part of north west Africa.

80. In any case, the fact that we have reached agreement on the draft resolution should not cause us to lose sight of our Organization's responsibility to ensure that it is carried into effect.

81. As we said at the 560th meeting of the Special Committee on 14 September 1967:

> "In view of the profound repercussions which the development of this question is likely to have on our country, no one will be surprised at our interest in the problem posed by the way this situation developed."

82. Consequently, Algeria wishes to express its satisfaction to the Assembly for having endorsed and acted on our interest in finding a solution to this problem and in the relevant procedures.

83. Furthermore, the constructive spirit shown by the parties concerned as well as the other interested parties—in this case Algeria, Spain, Morocco and Mauritania—has made possible the preparation and wide acceptance of a draft resolution which adequately emphasizes the specific and contingent nature of the two Territories.

84. That is why my delegation, as it said earlier, will be open to any suggestions which take into account the explicit and implicit conditions contained in this draft. While some difficulties still remain, they have no bearing on the heart of the problem, and we are convinced that they will be eliminated if the parties concerned desire to speed up the decolonization process, as they have often said they do.

85. My delegation hopes that such a solution, which is in accordance with the doctrine and ideology of decolonization as undertaken under the aegis of the United Nations, will bring to that region an era of understanding, brotherly co-operation and a strengthening of ties between countries dedicated to the task of building a balanced and prosperous region.

86. Mr. FARRELL (New Zealand): Draft resolution V contained in the Fourth Committee's report on item 23 [A/7013, para. 39] is what is commonly called the "small Territories" resolution. Since two of the Territories in the first preambular paragraph are Niue and the Tokelau Islands, I should like to comment briefly on the extent to which the draft resolution can be held to apply to those four tiny islands for which New Zealand retains some responsibility.

87. First, let us remove some erroneous preconceptions. There are no military bases or installations on those islands. There is no threat to their "territorial integrity". There are no "foreign economic interests". There are no expatriate planters on the islands, and no land has been alienated to expatriates. Indeed, such alienation is specifically prohibited by law. New Zealand has no economic interests in those islands of any significance whatsoever. The annual grants made to the islands by New Zealand amount to four or more times the total value of all the exports produced by the people. It follows from these facts that many sections of the draft resolution before us and of the omnibus resolution [2288 (XXII)] on colonialism which the Assembly adopted on 7 December can clearly not apply to Niue and the Tokelaus.

88. Draft resolution V also recalls the historic Declaration contained in resolution 1514 (XV), and reaffirms the right of the peoples of those Territories to "self-determination and independence". We have no quarrel with that; that right is undenied in the New Zealand Territories. But there is no reason why it should not be reaffirmed. We would simply observe in passing that resolution 1514 (XV) does not itself equate "self-determination" with "independence" in quite the same way as this text does.

89. This is not the occasion to outline at length what New Zealand has done in endeavouring sincerely to give effect to the commitment entailed in voting for resolution 1514 (XV). Western Samoa and the Cook Islands have exercised the right to self-determination since 1960, and it is open to the 5,000 Niueans and the 1800 Tokelauans to choose their future status when they so wish. The fact that their homelands are tiny, poor, isolated and permanently dependent on outside assistance does not lessen their right to self-determination; but the people themselves have acknowledged that their physical environment must play a large part in determining their choice on their future. Who would deny their realism?

90. New Zealand has pledged to continue to help them, no matter what their final choice may be. We have had resolution 1514 (XV) translated into the Niuean and Tokelauan languages and widely distributed. New Zealand Ministers have made it clear to the islanders that we do not want to see an indefinite prolongation of the colonial relationship. The people have not yet made their final choice. Until they do so, we are pressing ahead, in full co-operation with the Niueans and the Tokelauans, with fostering those democratic institutions through which the people may give continuing and free expression to their aspirations.

91. My Government can scarcely be expected to agree when this situation is greeted by unthinking critical comment, or by the polite discounting of advances made. The facts are on the record. The significant move this year in Niue towards a full ministerial system—the islanders already control the entire budget, including the New Zealand subsidy—and the involvement of the Tokelauans in the process of budget formulation have been described as "slow progress". Since, as has been stressed by New Zealand Ministers—and as the islanders themselves know—the pace of development is up to the people to decide, we do not accept this rebuke to the islanders. They are a pragmatic and rational people, working out their destiny as they themselves see fit. Nor can we, or the islanders themselves, accept the description of the Niueans' freely-elected legislature as "not an organ of the people . . . but an instrument of the administering Power". Even less can we accept the contention from one delegation that the Niuean Assembly's judgement might not be "correct".

92. These latter views are minority views in the Special Committee, but they cannot be allowed to pass without comment. It is with comments like these in mind that we shall withhold our support from operative paragraph 1 of draft resolution V, which would have the General Assembly approve, inter alia, the chapter of the report of the Committee of Twenty-Four referring to Niue and the Tokelaus [A/6700/Rev.1, chap. XVI].

93. My country has always, in the past, co-operated with the United Nations in decolonizing the handful of tiny islands for which we have had responsibilities. We have always felt that this Organization has an important role to play in promoting and facilitating this epoch-making process—a process which has altered the entire spectrum of relationships in those areas of the world where self-determination is accepted as a hallowed right.

94. We would regard it as a departure from the provisions of the Declaration on Colonialism were we in the United Nations now to move towards substituting our own views for the freely-expressed views of the colonial peoples themselves. On a close re-reading of resolution 1514 (XV) we find no suggestion that all the known views of a people should be disregarded in the interest of pursuing some supposed doctrinal imperative. We find instead that the transfer of all powers to the people is to be responsive only to the "freely expressed will and desire" of the people. That is a principle to which we shall steadfastly adhere.

95. The draft resolution requests the Special Committee to pay special attention to the small Territories next year. We heartily endorse that request. We are aware that this hard-working Committee, faced with obduracy in southern Africa and with a heavy schedule of meetings, finds it difficult to arrange its timetable so as to debate the situation in the small Territories in any detail. We would hope that in 1968 this situation could be remedied. In taking into account not only the limitations imposed by environmental factors referred to in this draft resolution but also the freely-expressed views of the people themselves, the Committee will, we trust, come up with some helpful suggestions and advice which will add lustre to the role of the United Nations in the field of decolonization.

96. Lord CARADON (United Kingdom): We have before us today five resolutions and a consensus [A/7013, paras. 39-40]. On all of them we have carefully and fully explained our views in the Fourth Committee, and there is no need to repeat them now. I wish, however, to restate in summary the position of my country on draft resolution I, regarding Gibraltar.

97. That is a matter of the greatest concern to my Government and to the people of my country, who are very much alive to our obligation to see justice done. Throughout the debates in the Fourth Committee, both this year and before, we have emphasized that there are two basic principles which we cannot betray: first, the principle that the interest of the people must be paramount and, second, that the people have the right freely to express their own wishes as to their future. Those principles have guided us and will continue to guide us in our task of carrying out our responsibilities to the peoples of the dependent Territories for which we are responsible. In the whole process of decolonization we have adopted the methods of consultation and consent. We shall not abandon those principles in the few dependent Territories for which we are still responsible.

98. We have consequently maintained and consistently stated that to hand over this small, proud, united community of free men against their will, to be bound for ever to a régime which has done so much in an endeavour to harm them, would be an intolerable injustice. We believe that their interests must be taken into account in determining their future and not merely after their fate has been settled.

99. While we have been ready and anxious to continue negotiations with the Spanish Government, we have also claimed that a territorial dispute should be settled by judicial process and not by a vote of this Assembly. It is for that reason that we have stated our readiness to refer the dispute over sovereignty to the International Court.

100. We shall not be deterred, nor shall we be deflected, from carrying out our obligations. Again, therefore, I say that my Government could not accept a resolution which sought to take sides in a territorial dispute between two Member States and, at the same time, sought to ignore the freely expressed wishes of the overwhelming majority of the people concerned.

101. Mr. C. O. E. COLE (Sierra Leone): My delegation finds it necessary to speak in this Assembly, for the record, in explanation of our vote on the question of Gibraltar. That question aroused interest in the Fourth Committee to the extent of creating emotional exchanges over territorial claims on Gibraltar.

102. Last year my delegation sponsored an amendment to General Assembly resolution 2231 (XXI), which highlighted, among other things, the interests of the people as being of paramount importance. That resolution was adopted almost unanimously. This year, when the question of Gibraltar was discussed in the Fourth Committee, the principles of the interest and wishes of the people of Gibraltar and the Territory's decolonization became secondary to those of territorial integrity and unity, as can be seen from paragraph 17 of the report the Assembly is now considering [A/7013]. We now find repeated in the draft resolution relating to Gibraltar those very paragraphs which appear in paragraph 17 of the report. I am referring to the fifth preambular paragraph and operative paragraph 2.

103. For those reasons my delegation will vote against the draft resolution [ibid., para. 39]. We shall vote against it because we have always held that the interest of the people is a paramount consideration and also because we find in the draft resolution far-reaching proposals which would result in seriously stifling decolonization—a principle which my delegation has always believed in and stood by.

104. Regarding draft resolutions II to V [ibid.] my delegation will vote in favour of them.

105. Mr. BENHIMA (Morocco) (translated from French): My delegation would gladly have refrained from speaking in the General Assembly on the question of Ifni and Sahara, since we felt that the explanations it gave in the Fourth Committee, particularly after the adoption by an overwhelming majority of draft resolution II, were sufficient. Unfortunately, the Algerian delegation saw fit today, in explaining its vote on the draft resolution, to go beyond the context of the problem and the facts of the case.

106. I am therefore forced to revert, as briefly as possible, to the arguments on which my delegation bases its rejection of Algeria's interpretation of both the wording and the spirit of certain paragraphs of this draft resolution, giving them a meaning which corresponds to its own view. I maintain that this interpretation reflects the views of Algeria alone, because during the debate no-one—not even one of the sponsors of the draft or any of those who abstained—saw fit to give the interpretation we have just heard for the benefit of the majority which accepted the text.

107. That interpretation contains two points: the first is a refutation of the idea that the question of Ifni and Spanish Sahara forms a single whole.

108. I am obliged to lengthen my statement somewhat by recalling that for a period of exactly six years, at the request of the Committee of Twenty-Four, the questions of Ifni and Spanish Sahara have been placed under one heading and have been discussed together. That discussion culminated in the adoption of a resolution [2229 (XXI)] in which the preambular paragraphs relating to Ifni were closely bound up with those relating to Spanish Sahara. Previous United Nations resolutions have all treated the two problems in exactly the same way.

109. So much for the form, which is not without significance in an Organization such as this.

110. As to the substance, the Moroccan claim to these two parts of its territory—Ifni and Spanish Sahara—has scarcely been changed in essence by the fact that Ifni forms an enclave encircled by land under the sovereignty of Morocco, and that the territories of Spanish Sahara lie to the far south of Morocco in a part of our territory which has already been the subject of an enquiry connected with the territorial dispute with Spain which gave us in 1958 part of Spanish Sahara to the twenty-seventh parallel, in other words, the southern Sahara.

111. Now, an attempt has been made, simply because of a presentation in which section I is entitled "Ifni" and section II, "Spanish Sahara", to draw a distinction to which I am most vehemently opposed. In our opinion, the problem is and remains one of claims on territories which are Moroccan. These claims are addressed to the same administering Power, which may have administered the two Territories in a different fashion, as is frequently the case with colonial Powers. But the historical nature of these two Territories, which have been the subject of bilateral treaties between Morocco and Spain as well as of international conventions in the International Court of Justice, remains valid from the point of view of international law to this very day.

112. Ever since our country became independent, the delegation of Morocco has fully explained its views in all the bodies that have been concerned with this problem, basing its arguments on international documents drawn up at the end of the last century and on the international diplomatic activity which preceded the Protectorate Treaty,[3/] as well as on the spirit in which our relations with Spain have been conducted ever since independence.

113. Successive negotiations on the evacuation of Spanish troops and on the territorial dispute have given rise to exchanges of notes and discussions at Madrid and Rabat which have established the existence of a territorial dispute between ourselves and Spain.

114. I heard the claims of Mauritania in the Fourth Committee. I certainly do not intend to revive a quarrel, but I should like, just the same, to dispel any doubt which may remain as to the validity of such a claim.

115. For the last two or three years we have witnessed a tactical manoeuvre which consists in seizing on the presentation or phrasing of a resolution, in an attempt to alter the substance on the basis of the form. I am not aware that at any time in the history of colonization in this part of Africa there has ever been any relationship of colonized and colonizer between Mauritania and Spain. Supposing that a territorial entity were to be accorded to Mauritania, it would have to be a territory which had been specifically under French administration, for I fail to see when or how the administering Power which made Mauritania an independent State would have deliberately or lightly abandoned any part of Mauritanian territory to Spain, whether openly or by a secret arrangement. Theirs is perhaps the most simplistic argument, but it does not come very close to common sense.

116. The Algerian delegation has seen fit to show an interest in the solution of this problem. I do not deny that Algeria is energetically pursuing an anti-colonialist and anti-imperialist policy and I applaud its desire to take a special interest in the liberation of a territory which is on the continent of Africa. That is a legitimate interest for any country which has constantly pursued an anti-imperialist policy. But the argument which Algeria has put forward to prove that it has a special interest in this question is that it is a neighbour. That is a completely fallacious argument because the area in which Algeria and Spanish Sahara could be said to be neighbours in a sense involves the very territory over which there is a dispute between Morocco and Algeria, a territory sovereignty over which remains undecided since it has, since 1963, been the subject of an investigation by the Organization of African Unity an investigation which is continuing within a very specific framework.

117. I shall not repeat the substantive arguments for rejecting this claim. According to Algeria, the fact that it is in a sense a neighbour gives the neighbouring State a special right to concern itself closely with the destiny and future of a territory and its popula-

3/ Franco-Moroccan Treaty signed at Fez on 30 March 1912.

tion. At the Conference of Foreign Ministers of the Organization of African Unity in June 1965, the Moroccan delegation expounded in a solemn declaration, which was published by the Press and communicated to many Ministries of Foreign Affairs, the philosophy of Morocco on the future evolution of that territory and the destiny of its people. We also stated that policy here [1500th meeting] and in the Fourth Committee [1661st meeting] in December 1966. In the resolution [2229 (XXI)] which was adopted at that time Mauritania and Morocco were referred to as countries which Spain might invite to take part in consultations on the settlement of this problem. That resolution used the expression "and any other interested party". This phrase, whether in the singular or in the plural, does not mean that any particular country is meant, the phrase "any other interested party" does not give every neighbouring State the right to regard itself as the country referred to.

118. I have taken great pains to explain this point because the representative of Algeria just cited, on the basis of the words "any other interested party", the names of Spain, Mauritania, Morocco and Algeria as Powers having an interest in taking part in talks on this subject. I wish to make it clear that those who drafted resolution 2229 (XXI) of 16 December 1966 and those who formulated draft resolution II, which was originally submitted to the Fourth Committee on 15 December 1967, did not intend the reference to "any other interested party" to signify any specific country.

119. The PRESIDENT (translated from French): I call on the representative of Algeria, who wishes to exercise his right of reply.

120. Mr. BOUATTOURA (Algeria) (translated from French): My delegation and I myself had not expected a barely restrained diatribe on the part of the Moroccan representative. Our relations with Morocco are too close ever to permit this type of exchange, especially in a forum such as this.

121. I felt that my explanation could not possibly offend anyone. I tried to be as faithful as possible both to the text which has been submitted to us and to the steps which have made it possible to reach a unanimous agreement, an agreement which is due, as I have already said, both to the agreement reached between the delegations of Morocco, Mauritania and Algeria and to the vote which enabled the administering Power—in this case, Spain—to support the draft resolution when it was considered in the Fourth Committee.

122. Motives have been attributed to us of which we are innocent. It has been said that we concentrated in particular on two points in the text, namely, that the two questions form a single whole, and that Algeria has an interest in the liberation of the Spanish Sahara and its exercise of the right of self-determination.

123. As far as the single whole is concerned, I shall not follow the example of my distinguished friend and colleague the representative of Morocco by indulging in futile and certainly sterile polemics; I shall let the members of this Assembly judge for themselves. My delegation will have the opportunity to return to this point and shed some light on the situation in more appropriate circumstances.

124. Where Morocco's claims are concerned, my delegation has not in any of its statements, either today or previously, either denied or challenged them in the slightest. Naturally Algeria wishes to remain faithful to a principle which enabled it to accede to independence—the well-known principle of the right to self-determination. That is why, perhaps, we felt it would be appropriate to stress the right of self-determination of the people of Spanish Sahara and the people of Ifni, and we may have given the impression that we attach secondary importance to claims. That should not be held against us. We merely wished to point out that this faithfulness to the right of self-determination which gave birth to an independent Algeria often compels us to give a priority to that right, perhaps to the detriment of certain claims.

125. Phrases such as "fallacious argument" and "undecided sovereignty" have been used. I do not wish this Assembly to become a forum for remarks of this kind which, in any event, can only be harmful both to those who make them and to their relations with those to whom they are addressed. Our debate is not about "undecided sovereignty" or about the claims just mentioned. We thought that the purpose of this discussion was to speed up the process of decolonization, and we approached this problem without any ulterior motive.

126. As to Algeria's own interests, ths sponsors of the draft resolution, those who helped the delegations of Morocco, Mauritania and Algeria to reach an agreement, and those who voted for the draft were all perfectly well aware of the implications of voting for the paragraph which refers to talks between the Governments of Morocco, Mauritania and "any other interested party".

127. The PRESIDENT (translated from French): I call on the representative of Mauritania, who wishes to speak in exercise of the right of reply.

128. Mr. OULD DADDAH (Mauritania) (translated from French): The delegation of the Islamic Republic of Mauritania asked to speak in explanation of its vote after the voting. We adhere to that request and we shall presently explain the vote that we shall cast on the draft resolution now before the General Assembly. Clearly, therefore, we had not intended to speak at this stage of the debate.

129. However, following the Algerian representative's statement and Mr. Benhima's reply to it, we feel obliged to coment on a number of points which have been raised.

130. My delegation stated its position on this question in the Committee of Twenty-Four, in the Fourth Committee, at various times in the General Assembly, and in the Organization of African Unity, which was mentioned a few moments ago.

131. The representative of Morocco was Minister for Foreign Affairs in his country before his return here. He was also the Permanent Representative of Morocco to the United Nations in 1960. At that time, an extremely important document was issued

by the Moroccan Ministry of Foreign Affairs and circulated by Mr. Benhima with the skill which we have seen him display in this Organization. That document presented the Sahara as an integral part of Mauritania which was claimed by Morocco solely because the latter was claiming the whole of Mauritania. That argument and that testimony appear important to us, and they should raise no objections on the part of those who were kind enough to supply the material to Mauritania.

132. I must add that Morocco's claims to the Sahara go back only as far as the time of Morocco's claims to Mauritania, that is, to the time when, together with other States whose common destiny Morocco had shared as a French colony, Mauritania was preparing for autonomy and independence. It was then that Morocco made its claims to Sahara and Mauritania although, I repeat, it claimed the Sahara solely as an integral part of Mauritania.

133. In addition to the document we have just mentioned, which is of recent date fut which carries considerable weight because of its source, there are other documents.

134. In the eighteenth century, in a well-known treaty which was signed at Marrakech in 1767 between the sovereigns of Morocco and Spain—there is a copy of this treaty in every foreign ministry; the Permanent Mission of Mauritania has one, and there is certainly one in the Moroccan archives—the then Sultan of Morocco recognized that his sovereignty did not extend to the south of the present enclave of Ifni and the Oued Noun, which is a river in the south of Morocco, and that he could not be held responsible for what might happen to anyone travelling beyond that boundary.

135. That was the position consistently held by Morocco until 1957-1958, when the claims to Mauritania were first made.

136. Mauritania's position on that question—as we have said on many occasions—is clear and firm enough to be maintained in the future. As we have heard this afternoon, Morocco's policy with regard to the Sahara, on the other hand, has undergone some significant changes. Everyone here knows that Morocco claimed it as an integral part of its territory, as did Mauritania also. Everyone also knows that after having played down its claims over Mauritania, which it regards as continuing, Morocco asked for independence for the Sahara which, I take pleasure in pointing out, has only 25,000 inhabitants. Morocco saw fit to request independence for that region while continuing to lay claim to a country of more than 1.5 million inhabitants which has been a Member of the United Nations for a number of years. This is a contradiction which, I feel, deserves attention.

137. Following Mauritania's accession to independence, following a change of ambassadors and the arrival of Mr. Benhima, a new interpretation emerged. An argument was put forward to the effect that what Morocco understood by independence would not alter what it regarded as its fundamental rights, or in other words, that it was requesting independence for the Sahara while holding that the Sahara was an integral part of Morocco.

138. Every delegation can interpret an attitude or a text in any way it pleases; but I must admit that my own delegation has some difficulty in understanding this particular interpretation.

139. With regard to the Sahara—I do not wish to take up too much time, since I shall explain my delegation's vote on the draft resolution after the voting—we have said that Mauritania recognizes the right of these people to self-determination. We have said, on instructions from our Government, that Mauritania will accept the results of the proposed referendum, since it will be carried out under conditions which will not allow any doubt to be cast on its validity or authenticity.

140. That much we have already said before and we repeat it now. We have also intimated, however, that until those results have been obtained and in view of the fact that our conviction that this region belongs to Mauritania is important and fundamental to us, we shall maintain our position, namely, that the Sahara is an integral part of Mauritania.

141. We have also said that we understand and shall continue to understand, taking all relevant factors into account, that the neighbouring countries are also interested in finding a solution to the problem of a region which may prove important to them for security reasons because it closely effects areas for which they hope a solution will be found that will not prejudice their security. It is in this fashion and in this spirit that the delegation and Government of the Islamic Republic of Mauritania have given sympathetic understanding to the attitude of the Algerian Government on this question.

142. Morocco, obviously, can continue to evolve its views as it sees fit and deems best, but we continue to believe that Morocco has nothing to do with the Sahara, whose Mauritania population—it would probably serve no purpose to go back into history—has never had any relationship of sovereignty with Morocco, and that it was these same people—we can say this with a smile but it is nevertheless so—who at one point in history invaded the Kingdom of Morocco. It was of these people that the sovereign ruler of Morocco spoke with fear and with a certain contempt, but a contempt worthy of notice chiefly because it was based on fear. These were the people who inhabited the Sahara, who still inhabit the Sahara, who inhabit Mauritania and who intend to continue with the same determination for which they have become known in history to preserve and defend their rights.

143. The PRESIDENT (translated from French): The Assembly will now vote on the resolution recommended for adoption by the Fourth Committee [A/7013, para. 39].

144. I shall first put to the vote draft resolution I. A roll-call vote has been requested.

A vote was taken by roll-call.

Nigeria, having been drawn by lot by the President, was called upon to vote first.

In favour: Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saudi-Arabia, Somalia, Southern Yemen, Spain, Sudan, Syria, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Chad, Chile, China, Colombia, Congo (Brazzaville), Costa Rica, Cuba, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, El Salvador, Gabon, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Japan, Jordan, Lebanon, Liberia, Libya, Mali, Mauritania, Mongolia, Morocco, Nicaragua.

Against: Norway, Sierra Leone, Sweden, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, Australia, Barbados, Botswana, Canada, Ceylon, Denmark, Gambia, Guyana, Jamaica, Malawi, Malaysia, Maldive Islands, Malta, New Zealand.

Abstaining: Nigeria, Senagal, Singapore, Thailand, Togo, Uganda, United States of America, Austria, Belgium, Central African Republic, Congo (Democratic Republic of), Cyprus, Ethiopia, Finland, France, Ghana, Iceland, India, Israel, Kenya, Laos, Luxembourg, Madagascar, Mexico, Nepal, Netherlands, Niger.

Draft resolution I was adopted by 73 votes to 19 with 27 abstentions [resolution 2353 (XXII)].

145. The PRESIDENT (translated from French): I shall now put to the vote draft resolution II. The Fifth Committee has submitted a report [A/7019] on the administrative and financial implications of the adoption of this draft.

Draft resolution II was adopted by 113 votes to none, with 4 abstentions [resolution 2354 (XXII)].

146. The PRESIDENT (translated from French): I now invite the Assembly to vote on draft resolution III. The Fifth Committee has submitted a report [A/7025] on the administrative and financial implications of the adoption of this draft.

Draft resolution III was adopted by 111 votes to none with 5 abstentions [resolution 2355 (XXII)].

147. The PRESIDENT (translated from French): I shall now put to the vote draft resolution IV. A roll-call vote has been requested.

A vote was taken by roll-call.

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the President, was called upon to vote first.

In favour: Byelorussian Soviet Socialist Republic, Cameroon, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ecuador, Gambia, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kenya, Laos, Lebanon, Liberia, Libya, Malaysia, Maldive Islands, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Sierra Leone, Singapore, Somalia, Southern Yemen, Spain, Sudan, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Albania, Algeria, Argentina, Barbados, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi.

Against: Portugal.

Abstaining: Canada, Central African Republic, Chad, Dahomey, Denmark, Ethiopia, Finland, Gabon, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Luxembourg, Madagascar, Malawi, Netherlands, New Zealand, Niger, Norway, Senegal, Sweden, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium.

Draft resolution IV was adopted by 86 votes to 1, with 29 abstentions [resolution 2356 (XXII)].

148. The PRESIDENT (translated from French): Before putting to the vote the next draft resolution, I should like to remind the Assembly that the Rapporteur of the Fourth Committee said that it had been understood that when the Assembly approved the relevant chapter of the Special Committee's report [A/6700/Rev.1, Chapter XI] in paragraph 1 of the draft resolution, it would decide, subject to the consent of the donating Governments, that the contributions which have so far been paid into the Fund set up under General Assembly resolution 2063 (XX) would be tranferred to the general fund of the United Nations Development Programme, in view of that body's earnest desire to give more aid to Botswana, Lesotho and Swaziland.

149. I shall now invite the Assembly to vote on draft resolution V. There has been a request for a separate vote on paragraph 4, so I shall put this paragraph to the vote first. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Argentina, Botswana, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ecuador, Ethiopia, Gabon, Gambia, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Jordan, Kenya, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Mauritania, Mexico, Mongolia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Southern Yemen, Spain, Sudan, Syria, Thailand, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: Australia, Austria, Belgium, Canada, Denmark, Greece, Iceland, Japan, Luxembourg, Netherlands, New Zealand, Philippines, Portugal, Sweden,

United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Bolivia, Brazil, China, Costa Rica, Dahomey, Finland, France, Ireland, Israel, Italy, Malawi, Malaysia, Maldive Islands, Norway, Panama, Turkey.

Paragraph 4 was adopted by 78 votes to 16, with 16 abstentions.

150. The PRESIDENT (translated from French): I shall now put to the vote draft resolution V as a whole. A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Algeria, Argentina, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Central African Republic, Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia, Gabon, Gambia, Ghana, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Ivory Coast, Jordan, Kenya, Laos, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Somalia, Southern Yemen, Spain, Sudan, Syria, Thailand, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: None.

Abstaining: Australia, Austria, Barbados, Belgium, Canada, China, Costa Rica, Denmark, Finland, France, Greece, Guyana, Iceland, Italy, Jamaica, Japan, Luxembourg, Malawi, Maldive Islands, Netherlands, New Zealand, Norway, Portugal, Sweden, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America.

Draft resolution V as a whole was adopted by 86 votes to none, with 27 abstentions [resolution 2357 (XXII)]. 4/

151. The PRESIDENT (translated from French): I invite the Assembly to examine paragraph 40 of the Fourth Committee's report [A/7013].

152. The Fourth Committee recommends that the Assembly adopt the text of the agreement on the question of the Falkland Islands (Malvinas).

153. If there are no objections, I shall take it that the General Assembly adopts the text of the agreement contained in paragraph 40 of the report.

It was so decided.

154. The PRESIDENT (translated from French): I shall now call on those delegations which wish to explain their vote.

4/ The representative of Sierra Leone subsequently announced (see para. 168) that he wished the name of his country to be added to the list of those which had voted in favour of the draft resolution.

155. Mr. OULD DADDAH (Mauritania) (translated from French): The delegation of the Islamic Republic of Mauritania would not wish to let this opportunity pass without offering its warmest congratulations to Mr. George F. Tomeh, the Chairman of the Fourth Committee, for the wisdom, patience, tact, understanding and firmness with which he conducted the Committee's work. The unceasing efforts of the Committee of Twenty-Four, the Afro-Asian Group and the Fourth Committee under the impartial and efficient direction of its distinguished Chairman have made it possible for this session to take constructive action leading to the just and satisfying solutions which must be found to the still numerous and often complex problems arising from the process of decolonization. My delegation would like in particular to express once again its thanks to all those who have worked long and hard to find an acceptable solution to the question of so-called Spanish Sahara. That question, as everyone knows, is of the greatest importance to my country.

156. Last Saturday, when the Fourth Committee voted on the resolution concerning so-called Spanish Sahara [1755th meeting], the delegation of the Islamic Republic of Mauritania made some comments and expressed certain reservations which I should like to repeat in the General Assembly so that they may be included in the records of this meeting.

157. My delegation considers that the resolution we have just adopted on so-called Spanish Sahara contains certain positive elements which have made it possible for it to vote for the text. One of these positive elements is the clear distinction drawn in the operative part of the resolution between the enclave of Ifni and the territory of so-called Spanish Sahara. This view corresponds to the actual facts of the situation as repeatedly pointed out by my delegation. In fact, so-called Spanish Sahara and Ifni are two completely distinct areas. The problems of these two geographically separate regions are intrinsically different. For this reason, and also for the sake of clarity in discussing them, they should be dealt with in different ways.

158. That is why the delegation of Mauritania entertains reservations about the fact that so-called Spanish Sahara and Ifni are dealt with in the same resolution. My delegation notes, however, that Ifni and so-called Spanish Sahara are clearly separated in the body of the resolution we have just adopted. It also takes note of the fact that, at the end of the operative part dealing with each of the two regions, the Special Committee is requested to continue its consideration of the situation in these territories and to report thereon to the General Assembly. Thus, at the end of the operative part relating to Ifni, it is stated that the territory should be the target of a separate report by the Special Committee, and the same is said in connexion with so-called Spanish Sahara. We consider, however, that it would have been more logical, fairer and simpler—and hence clearer—to deal with Ifni and so-called Spanish Sahara in two separate and distinct resolutions.

159. The delegation of the Islamic Republic of Mauritania, trusting that all its comments and reser-

vations will be included in the record of this meeting of the General Assembly, would also like to point out that the resolution we have just adopted fails to make one of the essential aspects of the question of Spanish Sahara sufficiently clear. If the neighbouring countries of that region, as such, are interested, we can state quite categorically that, as regards the question to whom so-called Spanish Sahara belongs, the Islamic Republic of Mauritania is the interested party. The resolution should have made this point with much greater clarity. The Mauritanian delegation had expected, with every justification, that it would be reflected in the resolution.

160. In this connexion, we should like to recall and confirm the statements on so-called Spanish Sahara made by Mauritanian leaders and by the Mauritanian delegation in the Committee of Twenty-Four, the Fourth Committee and the General Assembly. The fact that Morocco is named alongside the Islamic Republic of Mauritania in connexion with so-called Spanish Sahara in this resolution in no way signifies that my Government recognizes that Morocco has any rights to the region. We regard Morocco simply as a neighbouring State of so-called Spanish Sahara which, for this reason only, has an interest in the future of the region along with other States.

161. Finally, the delegation of the Islamic Republic of Mauritania considers that operative paragraph 3 (a) of part II of the resolution on so-called Spanish Sahara which was adopted during this meeting refers only to the few indigenous inhabitants of so-called Spanish Sahara who have no commitments towards any foreign country. Therefore, as far as our delegation is concerned, these are the indigenous inhabitants of so-called so-called Spanish Sahara who, for one reason or another, are at present away from their homes. Paragraph 3 (a) of part II of the resolution on so-called Spanish Sahara just adopted by the General Assembly should and can refer only to these people.

162. Mr. DE PINIÉS (Spain) (translated from Spanish): The resolution on Gibraltar just adopted by an overwhelming majority of the Members of the General Assembly brings to an end a stage in the colonial history of that Territory. Spain accepts the resolution, and my delegation has no desire to continue with the United Kingdom delegation a controversy which would go far beyond what the international community represented here has decided. I shall therefore refrain from refuting the arguments which my friend the distinguished representative of the United Kingdom, Lord Caradon, has adduced to justify his country's opposition to the resolution.

163. On a day like this my delegation feels that explanations of any kind are superfluous. In the resolution just adopted, the logical sequel to General Assembly resolutions 2070 (XX) of 1965 and 2231 (XXI) of 1966, the United Nations has indicated the logical, proper and just course for the elimination of the colonial situation in Gibraltar.

164. The Territory severed from my country should be reunited to it and the interests of the United Kingdom subjects who have thus far benefited from the colonial situation should be respected.

165. Within a few weeks the negotiations between Spain and the United Kingdom suspended last April by the United Kingdom will resume in Madrid. As I stated in the Fourth Committee, my Government will attend those negotiations and will abide by the decision of the United Nations, prompted by a sincere desire to co-operate with the United Kingdom.

166. For 263 years the colonial situation in Gibraltar has been a serious obstacle to friendship between Spain and the United Kingdom. This has been detrimental not only to both countries, but to the international community as well. Today the United Nations has taken a step towards surmounting that obstacle; my delegation hopes that the United Kingdom and its subjects who settled on the Rock of Gibraltar will continue that process and will one day take a decision which will honour the Organization which drafted the resolution. Spain wishes to express its gratitude now, and hopes that in the coming year we shall be able to announce from this rostrum that the problem of the decolonization of Gibraltar has been settled.

167. My delegation voted in favour of the resolutions just adopted on Ifni, Spanish Sahara and Equatorial Guinea. As we have expressed our views in the Fourth Committee (1750th meeting), we did not feel it necessary to make a further statement here, since we remain consistent with what we have already said and with our vote here today.

168. Mr. C. O. E. COLE (Sierra Leone): My delegation would like to explain its vote on draft resolution V. We had intended to vote in favour of that draft resolution by pressing the green button, but it did not seem to register.

The meeting rose at 6.10 p.m.

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for determining the extent of United Nations participation in the preparation and supervision of the referendum and submitting a report to him for transmission to the General Assembly at its twenty-fourth session;

5. *Requests* the Special Committee to continue its consideration of the situation in the Territory of Spanish Sahara and to report thereon to the General Assembly at its twenty-fourth session.

Other Territories

In 1968, in addition to the territories covered in the preceding sections, the General Assembly and its 24-member Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples considered the situation in the following territories: American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands.

During 1968, two former non-self-governing territories acceded to independence—Mauritius on 12 March and Swaziland on 6 September.

The Special Committee referred the other 24 territories to its Sub-Committees I, II and III for consideration and report. The Special Committee adopted the Sub-Committees' reports on all but two of these territories and endorsed their conclusions and recommendations, in most instances on the understanding that any reservations made by members of the Committee would be included in the meeting records. Owing to lack of time, the Sub-Committees concerned were unable to complete their consideration of the British Virgin Islands and Cocos (Keeling) Islands and, therefore, the Special Committee took no action on either of these territories.

The Special Committee also decided to consider the situation in Brunei, in Hong Kong, and in Papua and the Trust Territory of New Guinea. However, owing to lack of time, the Special Committee had to defer consideration of these territories until 1969, subject to any directives from the General Assembly at its twenty-third (1968) session. The situation in British Honduras, which the Special Committee had decided to take up in plenary meetings, was also deferred to 1969.

In addition, the Special Committee considered the situation in the Trust Territory of the Pacific Islands, and the General Assembly considered the situation in Papua and the Trust Territory of New Guinea. (For further details, see pp. 701 and 692-93 above.)

CONSIDERATION BY SPECIAL COMMITTEE

The Special Committee heard nine petitioners: McChesney D. B. George and Russel John concerning Antigua; Roosevelt Brown and Elvira Warner concerning Bermuda; A. D. Patel and Reuben K. Uatioa concerning the Gilbert and Ellice Islands; William V. Herbert concerning St. Kitts-Nevis-Anguilla; E. Theodore Joshua and O. R. Sylvester concerning St. Vincent.

On 11 March 1968, the Chairman of the Special Committee, on behalf of the Committee, welcomed the accession of Mauritius to independence. Statements of welcome were also made by members of the Committee, among them Australia, Chile, India, Madagascar, the USSR, the United Kingdom and the United States.

The question of Swaziland was considered by the Special Committee at meetings between 11 April and 22 May 1968 and again on 5 September 1968.

When the Special Committee began its consideration of the item on 11 April, the representative of the United Kingdom made a statement describing developments in Swaziland in 1967 and 1968. The main development in 1968 had been a constitutional conference held in London, United Kingdom, from 19 to 23 February to consider the future constitution of the territory. The conference had approved proposals of the Swaziland Government, subject to certain modifications, which were also approved. However, the United Kingdom representative said, no agreement had been reached on two matters: the question of land and the question of the rights of control over mineral resources.

On 22 May, the Special Committee adopted —by 20 votes to 0, with 3 abstentions—a resolution proposed by Afghanistan, Ethiopia, India, Iran, Iraq, the Ivory Coast, Madagascar, Mali, Sierra Leone, Syria, Tunisia, the United Republic of Tanzania, and Yugoslavia.

By this, the Special Committee reaffirmed its previous resolutions and recommendations concerning Swaziland and noted that the administering power, the United Kingdom, had complied with the unanimous request of the Swaziland Parliament in September 1967 that the territory accede to independence on 6 September 1968. The Committee regretted that no agreement had been reached between the administering power and the Swaziland people concerning the latter's claim for compensation for land alienated from them, and reiterated its previous request that the administering power take immediate steps to ensure the return of all land or to pay compensation. The Committee also reiterated its request that the administering power take action to bring about the economic independence of Swaziland vis-à-vis the Government of South Africa, to protect the territorial integrity and sovereignty of the territory in view of the interventionist policies of the racist régime in South Africa, and to enable the territory to achieve genuine and complete independence.

The United Kingdom, which abstained in the vote, expressed reservations on the provisions dealing with land ownership and with the economic independence and territorial integrity of Swaziland. Action on the question of land ownership, under the 1967 Constitution, was entirely within the competence of the elected Government of Swaziland. If the Government of Swaziland included land settlement projects in its national development plan, financial assistance would almost certainly be forthcoming from the United Kingdom. Swaziland's Prime Minister had announced his Government's intention to resume negotiations on the matter in the near future.

On the question of economic independence, the United Kingdom representative stated that Swaziland's geographical situation made the need for some correlation of its economic and currency arrangements with the South African Government inescapable, and it was already co-operating in a customs union with that country. The United Kingdom would fulfil its responsibilities for protecting the territorial integrity of Swaziland until it became independent, but believed that there was no evidence of any territorial ambitions on the part of South Africa.

Chile, Finland, Honduras and Italy also expressed reservations concerning these provisions.

At the meeting on 5 September, members of the Special Committee welcomed the forthcoming accession of Swaziland to independence on 6 September.

The Chairman of the Special Committee said it was a matter for regret that since the adoption of the Committee's resolution of 22 May no indication of any significant improvement in the situation had been received. However, the accession of Swaziland to independence was an occasion for the Committee to express its congratulations and best wishes for the prosperity and well-being of the people of the territory.

On 17 May 1968, the Special Committee adopted an interim report on Bermuda submitted by Sub-Committee III and endorsed the conclusions and recommendations contained therein, as orally amended by the United Republic of Tanzania. The Special Committee expressed concern over recent developments in the territory and the action taken by the administering power—the United Kingdom—in declaring a state of emergency in, and sending troops to, the territory. It took note of the information provided by the administering power that the state of emergency had been lifted on 8 May and requested the administering power speedily to withdraw the troops it had sent. The Special Committee also requested the administering power to defer the elections until conditions in the territory were completely normal, and called upon it to ensure the necessary conditions in which the people of the territory might express their views in full freedom and without any restrictions. It reiterated its belief that a United Nations presence during the elections was desirable and urged the administering power to enable the United Nations to send a special mission to the territory and to extend to it full co-operation and assistance.

During the Special Committee's discussions of the Sub-Committee's interim report on Ber-

muda, the USSR said that the declaration of a state of emergency and the dispatch of United Kingdom troops on the eve of the elections could be interpreted only as the result of a deliberate intention to deprive the population of the opportunity to decide their future.

The United Kingdom representative said that because of disorders in the territory during three days in late April, and the fact that the local security forces did not have the capacity to cope with the situation, a state of emergency had been declared and a force of 150 troops flown out from the United Kingdom. An independent commission was investigating the causes of the disorders and it could already be stated that they were unconnected with the political situation. He rejected any suggestion that the presence of such a small detachment of troops could in any way influence the forthcoming elections. The United Kingdom representative stressed that the state of emergency had lasted only a few days and that it was important for the Special Committee to understand that normal conditions had been restored within a few days.

The United Kingdom representative opposed the adoption of the interim report and said that its conclusions and recommendations were for the most part unacceptable. By commenting on administrative and executive matters which clearly lay within the responsibility of the government of Bermuda and the administering power, the Sub-Committee's request to withdraw troops and defer elections had gone well beyond what might be expected of it. It was not the Special Committee's function, he said, to judge how long troops should remain in the territory, and the request to defer the elections was even more surprising as they would be the first to be held in Bermuda by universal adult suffrage, by secret ballot. The representative of the United Kingdom said his Government was not prepared to accept a visiting mission or any other visit from the Special Committee at that time.

Reservations to the Sub-Committee's interim report were also voiced by Australia and the United States, particularly with regard to the deferment of elections, and the fact that no mention was made of the constitutional advances in Bermuda.

On 25 June 1968, the Special Committee adopted conclusions and recommendations concerning Bermuda, the Bahamas, the Turks and Caicos Islands, the Cayman Islands and Montserrat on the basis of a further report by Sub-Committee III. The Special Committee noted with regret that the administering power, the United Kingdom, had not taken further measures necessary to implement the Declaration on the granting of independence with respect to these territories and urged it to do so without delay. It reiterated its request to the administering power to take immediate measures to transfer all powers to the people of these territories, without conditions or reservations, in accordance with their freely expressed will and desire. In the Special Committee's view, a United Nations presence during the procedures for the exercise of the right of self-determination was essential. Once again it urged the administering power to enable the United Nations to send a visiting mission to the territories and to extend to such a mission full co-operation and assistance.

With regard to Bermuda in particular, the Special Committee regretted that the administering power had not responded positively to its request to defer the elections until conditions were completely back to normal and to ensure the necessary conditions in which the people of the territory might express their views in full freedom and without any restrictions.

Australia, the United Kingdom and the United States had reservations about the Sub-Committee's report as a whole, and in particular, about the paragraph of the conclusions relating to Bermuda and the elections which had taken place there on 22 May 1968. Similar reservations on this paragraph were expressed by Finland and Italy. Chile and Venezuela had reservations about the request to the administering power to take immediate measures to transfer all powers to the peoples of the territories, while the USSR had reservations on the paragraph relating to the necessity of a United Nations presence. It stated that as a first step the Special Committee might consider sending a visiting mission to report on conditions in the territories, and the question of a United Nations presence could be considered later.

On 25 June 1968, the Special Committee

adopted conclusions and recommendations contained in the report of Sub-Committee III on the United States Virgin Islands. By these the Special Committee: recognized that the small size and population of the territory presented peculiar problems which demanded special attention; noted with regret that no constitutional progress had taken place in the territory since the item had last been examined by the Special Committee and by the General Assembly; reaffirmed the inalienable right of the people of the territory to self-determination and independence; invited the administering power to encourage open, free and public discussion on the various alternatives open to the people of the territory in their achievement of the objectives of the Declaration on the granting of independence, and to ensure that the territory's people exercised their right of self-determination in full knowledge of these alternatives; reiterated its belief that a United Nations presence during the procedures for the exercise of the right of self-determination would be essential in order to ensure those ends; and once again urged the administering power to enable the United Nations to send a visiting mission to the territory and to extend to such a mission full co-operation and assistance.

Reservations were expressed by the United Kingdom and the United States on the ground that the conclusions and recommendations did not reflect the actual situation prevailing in the territory and did not adequately take into account the wishes expressed by the population. Australia also expressed reservations.

The USSR felt that a United Nations presence in the territory would be premature and would not produce positive results in view of the administering power's attitude.

On 3 July 1968, the Special Committee adopted conclusions and recommendations proposed by Sub-Committee III on the territories of Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent. In particular, it reaffirmed the inalienable right of the peoples of the territories to self-determination; noted with regret that the administering power, the United Kingdom, had refused to co-operate with the Sub-Committee; reiterated its request to the administering power to take immediate measures to transfer all powers to the peoples of the territories, without conditions or reservations; and requested it to promote closer ties among the territories through the building of a common political, economic and social infrastructure.

The Committee reiterated its belief that a United Nations presence during procedures for the exercise of the right of self-determination would be essential. It also urged the administering power to enable the United Nations to send a visiting mission to the territories and to extend to such a mission full co-operation and assistance.

The United Kingdom representative expressed reservations about the conclusions and recommendations as they applied to St. Vincent. The Sub-Committee's report, he said, had paid little heed to the information provided on constitutional progress in that territory. He said his remarks applied solely to St. Vincent and in no way prejudiced his Government's position regarding the five "West Indies Associated States" —Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla and St. Lucia—which had completed the process of self-determination in choosing the status of associated statehood in free association with the United Kingdom.[43]

Similar reservations were made by the United States representative, who did not consider the West Indies Associated States to be non-self-governing territories within the meaning of Article 73 of the United Nations Charter.[44] He and the representative of Australia considered that the territories did not come within the purview of the Special Committee.

The USSR representative expressed a reservation on the paragraph of the report relating to the need for a United Nations presence in the territories; the USSR believed that such a presence would be premature and would not prove productive, in view of the attitude of the administering power.

Also on 3 July 1968, the Special Committee adopted the conclusions and recommendations contained in the report of Sub-Committee I concerning the Seychelles and St. Helena under United Kingdom administration. It noted that, under the new constitutional arrangement for

[43] See Y.U.N., 1967, pp. 681-84.

[44] For text of Article 73 of the Charter, see APPENDIX II.

the Seychelles introduced by the administering power, a Governing Council had been established, but it considered this step as inadequate to promote the process of decolonization. It called upon the administering power to hold free elections in the two territories on the basis of universal suffrage, as a preliminary to transferring powers to representative organs resulting from such elections.

The Special Committee also deplored all actions by the administering power to separate certain islands from the Seychelles and reiterated its previous position that any action on the part of the administering power to establish the so-called "British Indian Ocean Territory" and any action, whether on its part alone or in conjunction with another power, to construct military bases therein would be incompatible with the United Nations Charter.

The Special Committee concluded further that the exploitation by foreign interests of the economy and natural resources of the Seychelles was detrimental to the genuine interest of the inhabitants. It noted that in both territories progress in education and health was still slow.

The United Kingdom and the United States, expressing their reservations to the Special Committee's conclusions and recommendations, considered that the Sub-Committee's report had failed to reflect the progress towards self-government and self-determination which had been achieved in the territories during the period under review. Both territories had a new constitution, drawn up after extensive consultations, and free elections based on universal adult suffrage had recently been held. Both representatives also denied allegations concerning plans to establish military bases on certain coral atolls separated from the Seychelles.

Similar objections to the report were voiced by Australia.

On 11 July 1968, the Special Committee adopted—on the basis of the report of Sub-Committee II—conclusions and recommendations concerning the Gilbert and Ellice Islands, Pitcairn and the Solomon Islands, administered by the United Kingdom.

Stating that it was fully aware of the special circumstances of geographical location and economic conditions that existed in the territories, the Special Committee reiterated its view that the size, isolation and limited resources of these territories should in no way delay the implementation of the Declaration on the granting of independence. It considered that the recent constitutional changes in the Gilbert and Ellice Islands and the Solomon Islands were insufficient to enable the people of the territories to exercise their right of self-determination in the foreseeable future, and it recommended that the administering power should transfer executive responsibilities and grant more powers to the elected representatives of the people. The Special Committee was of the opinion that the slow progress in the territories toward self-determination and independence was due, partly, to insufficent awareness of the applicability to those territories of the Declaration on the granting of independence. A visiting mission would contribute to a greater understanding of the problems facing the territories and would enable the Special Committee to assist the people of the territories and the administering power in finding the speediest and most suitable way of implementing the Declaration.

With particular reference to the Gilbert and Ellice Islands, the Special Committee regretted that the indigenous people had no say in the management of phosphate operations on Ocean Island, which constituted a major source of revenue for the territory. Recalling that the right of peoples and nations to self-determination included permanent sovereignty over their natural wealth and resources, the Committee urged the administering power to give the indigenous inhabitants a direct role in the control and management of the phosphate industry through the eestablishment of a special body consisting predominantly of indigenous representatives. It regretted that no satisfactory explanation had been offered by the administering power for the non-employment of Banabans in phosphate operations hitherto, and urged the administering power to facilitate such employment. The Committee requested the Secretary-General to conduct a detailed examination of all aspects of extraction and marketing of phosphate on Ocean Island. It also urged the administering power to appoint immediately a commission to look into the demands and grievances of the Banaban people.

Strong reservations concerning these conclusions and recommendations were made by the representatives of Australia, the United Kingdom and the United States.

The United Kingdom representative could not accept the proposition that geographical characteristics, isolation, dispersion and limited resources should not delay the decolonization process. He also could not see how the dissemination of the Declaration in the territories would encourage economic expansion or would enhance the political experience of the people's elected representatives.

The Special Committee's recommendations concerning the phosphate operations on Ocean Island, he continued, appeared to be based solely on the assertions of the legal adviser of the Banaban representatives. It was untrue that the indigenous people of the territory had no say in the management of the phosphate industry. The Banaban representatives had declined an invitation to visit London to explain the views of the community on matters relating to the apportionment of the total phosphate benefits. As to the recommendation that the indigenous inhabitants be given a direct role in the control and management of the phosphate industry, there was no evidence that the people of the territory had any desire to take over from the British Phosphate Commission the responsibility of such a complicated enterprise, which was conducted according to normal commercial standards.

The recommendation that the Secretary-General should conduct a detailed examination of the extraction and marketing of phosphate in a private industrial enterprise in a non-self-governing territory was unprecedented, he said.

As for the proposal to appoint a commission to look into the demands and grievances of the Banaban people, the United Kingdom representative said, his Government had been trying for some time to arrange a meeting in order to discuss the whole range of Banaban demands and grievances.

The United Kingdom representative also pointed out in his statement that general elections had been held in both the Solomon Islands and the Gilbert and Ellice Islands on the basis of universal adult suffrage. The processes of representative government were fully on the way in each territory in conformity with the expressed wishes of the people.

Statements in support of the Special Committee's conclusions and recommendations were made by India, Iraq, Sierra Leone and Yugoslavia.

On 11 July 1968, the Special Committee approved the report of Sub-Committee II on the territories of Niue and the Tokelau Islands—administered by New Zealand—by a vote of 19 to 3, with 2 abstentions. The Special Committee stated that it was fully aware of the special circumstances of geographical location and economic conditions existing in the territories, and reiterated its view that the question of size, isolation and limited resources should in no way delay the implementation of the Declaration on the granting of independence. It believed that the political changes in the territories were insufficient to enable the people to exercise the right of self-determination in the foreseeable future. Slow progress in the territories towards self-determination and independence was due, in part, to insufficient awareness of the applicability of the Declaration to those territories. The Special Committee reaffirmed the importance of a visiting mission to the territories and invited the administering power to reconsider its position that a visit by a United Nations mission would be appropriate only if it were to form part of a more comprehensive tour of the area, and to make it possible for a mission to visit the territories as soon as practicable.

The Special Committee welcomed the statement of New Zealand that when the people of the territories made their choice "they would doubtless do so under the eyes of United Nation observers." It concluded, however, that it would be desirable for a sub-committee to visit the territory before the people exercised their right of self-determination.

The Special Committee also recommended that the administering power intensify its educational programme and continue to seek the advice and assistance of the specialized agencies of the United Nations in formulating plans for the economic development of the territories, particularly for the territory of Niue, in order, among other things, to decrease Niue's economic dependence on the administering power.

Australia, the United Kingdom, the United States, and New Zealand (which participated in the Special Committee's discussion) considered that Sub-Committee II had not taken adequate account of the geographical, economic, social and political conditions in the territories, and that the conclusions and recommendations were divorced from reality.

Similar reservations were expressed by Finland and Italy. The representative of New Zealand said that his Government was assisting in the advancement towards self-determination of Niue and the Tokelaus as rapidly as the islanders themselves deemed appropriate. The peoples of these islands were well aware of the provisions of the General Assembly's resolution on the granting of independence. It had been translated into their languages and widely distributed.

In the course of the discussion, Chile said it was becoming more urgent every day to make a thorough analysis of the problem of what had been described as "micro-states," as it was not possible to consider the situation of such territories by following general rules and standards. In this connexion the representative of the United Republic of Tanzania urged that the Special Committee must reiterate the principle accepted by the overwhelming majority of United Nations Members that although territories were isolated and small, the people of those territories had the right to choose whatever political future they wished, and should be given every opportunity to express themselves fully.

Several members, including India, Madagascar, Mali, Syria, Tunisia and the United Republic of Tanzania, stressed the importance of sending a visiting mission to Niue and the Tokelau islands. The representative of New Zealand said that it had never excluded the possibility of a visit before the right of self-determination was exercised, but in its view it would be unreasonable and expensive to send a mission to two of the smallest and remotest territories unless that mission was also making a wider tour of the area.

With regard to the New Hebrides—a condominium administered by France and the United Kingdom—the Special Committee endorsed the conclusions and recommendations proposed by Sub-Committee II. Stating that it was fully aware of the peculiar problems of the territory, the Special Committee reiterated its view that the question of size, isolation and limited resources should in no way delay the implementation of the Declaration on the granting of independence. It regretted that no additional information had been provided by the administering powers; noted with concern that there were still no representative institutions in the territory; and regretted that the administering power had made no proposals for the speedy implementation of the Declaration in the territory.

The Special Committee further recommended that the administering powers take urgent measures to introduce representative political institutions and executive machinery, in conformity with the principles of the United Nations Charter and the provisions of the Declaration, in order to give the people of the New Hebrides the earliest opportunity to express their wishes with regard to the implementation of the Declaration through well-established democratic processes based on the principle of universal adult suffrage.

The Special Committee also invited the administering powers to reconsider their attitudes in regard to visiting missions and to allow a sub-committee to visit the territory. It recommended further that they intensify the economic, social and educational advancement of the territory, through a concerted effort, and that they secure the active participation of representatives of the people in the process; and, finally, that they seek the advice of the United Nations specialized agencies in formulating and implementing plans for this purpose.

Reservations concerning the report as a whole were made by Australia, the United Kingdom and the United States.

On 7 November 1968, the Special Committee approved the report of Sub-Committee II concerning Guam and American Samoa, and endorsed its conclusions and recommendations. Fully aware of the special circumstances of geographical location and economic conditions in the two territories, the Special Committee reiterated its view that the question of size, isolation and limited resources should in no way delay the implementation of the Declara-

tion on the granting of independence. It noted with concern that recent constitutional changes in the territories were insufficient to enable the people to determine their future except in terms of complete association with the administering power, and recommended that greater responsibilities be transferred to representatives of the people.

The Special Committee was of the view that the establishment of military bases in Guam was incompatible with the purposes and principles of the Charter and of the General Assembly's resolution (1514(XV)) on the granting of independence. It reiterated its view that the primary dependence of the economy of Guam on the military activities of the administering power should be reduced by greatly diversifying the economy of the territory. The administering power was again requested to intensify educational and training facilities so as to enable the people of the territories to occupy more responsible positions and play a larger role in the economy. The Committee invited the administering power to reconsider its position concerning visiting missions and allow a sub-committee to visit the territories.

Before adopting the report on Guam and American Samoa, the Special Committee, at the request of the United States, voted separately on the paragraph referring to the establishment of military bases on Guam. The paragraph was adopted by 11 votes to 6, with 4 abstentions.

The United States representative expressed strong objections to this paragraph and asserted that no provision of the United Nations Charter was opposed to the establishment of a military base in Guam. There was no evidence that the base had been used for purposes incompatible with the Charter or that it had impeded the territory's progress. Reservations on this paragraph were also expressed by Iran, the Ivory Coast, Madagascar and Venezuela.

Reservations to several or all of the Special Committee's conclusions were made by Australia, the USSR, the United Republic of Tanzania and the United States.

The United Republic of Tanzania objected in particular to the paragraph on constitutional changes. Since the administering power had not co-operated sufficiently in placing information at the Sub-Committee's disposal, the Special Committee should have condemned and deplored its attitude.

In addition to expressing reservations, the USSR proposed amendments to two paragraphs of the recommendation and conclusions but did not press them to a vote. By the first amendment, the Special Committee would condemn the recent constitutional changes in Guam and American Samoa, which did not enable the people of the territories to determine their future except in terms of complete association with the administering power. By the second amendment, the Special Committee would express the feeling that economic progress in the territories was unsatisfactory.

CONSIDERATION BY GENERAL ASSEMBLY

Later in 1968, at the twenty-third session of the General Assembly, the Assembly's Fourth Committee considered the Special Committee's report on the above territories. During the discussion, a number of representatives maintained that no substantial progress had been achieved in the process of decolonization, owing to the opposition of the administering powers, and criticized the refusal of these powers to allow the small territories to exercise their right of independence and self-determination, irrespective of size, or of economic, geographical, demographic or other factors. The representatives of Poland and India pointed out that effective power was not in the hands of the indigenous populations. The colonial powers were resorting to varied methods and delaying tactics to prolong their domination. The same old methods of exploiting the people and their land were still being used. In the Seychelles, for example, there was a ruling class composed of European landowners, and a lower class principally composed of Africans. The USSR representative stated that the introduction of new legislation in some territories had little meaning and the new status conferred on a number of territories in the West Indies, including the so-called "association" with the colonial power, represented annexation pure and simple.

Various Members, including Barbados, Malaysia and Trinidad and Tobago, thought that considerations of geographical situation and eco-

nomic conditions should not serve as an excuse for delaying the application of the Assembly's resolution (1514(XV)), on the granting of independence. Tunisia and the USSR considered that the administering powers should be called upon to apply the principle of self-determination without delay, and to transfer all powers as soon as possible to the representatives of the people.

The question of "association" was also referred to by others. Madagascar said that the populations of the small territories should be afforded the opportunity of associating with an independent State or group of States, with the help of the United Nations, should the territory not be economically viable. Trinidad and Tobago thought that a people might decide to associate with the United Nations, with a regional organization or with a league of States. Barbados considered that the United Kingdom should continue to transmit information on the Caribbean territories which enjoyed the status of associate statehood. The United Kingdom's responsibility for the external affairs of those territories carried with it the obligation to deal with the United Nations on their behalf and to transmit to it the wishes of their people. The Democratic Republic of the Congo said that so long as the people chose their own future by democratic means, without any economic or military pressure, there was nothing against "association" with the administering power. It was indispensable to close down the military bases and reduce the economic dependence of those territories.

Several other Members—including Algeria, the Byelorussian SSR, the Democratic Republic of the Congo, India, Kenya, Poland, Tunisia, the USSR, the United Arab Republic and the United Republic of Tanzania—called attention to the establishment or continued existence of military bases maintained by administering powers in small territories, and they called for the removal of such bases.

The representative of India denounced the decision of the United Kingdom to separate three of the Seychelles and form a "British Indian Ocean Territory" for military purposes. Such an action violated the territorial integrity of the Seychelles, and the construction of military bases in that territory would increase the tension in Africa and Asia and would hamper the implementation of the Declaration on the granting of independence. Poland and the USSR accused the colonial powers of converting the small territories, such as Guam, into military bases from which they carried out their repressive wars. The United Republic of Tanzania referred particularly to the strategic importance of small territories within the global policies of the colonial powers and considered that the maintenance of bases and troops in colonial territories was a threat to neighbouring independent States.

Some Members, including Algeria, Barbados, Iraq, Madagascar, Tunisia, and the United Arab Republic, pointed out that the United Nations had always stressed the importance and usefulness of sending missions to the territories to obtain first-hand information on the situation and on the views of the inhabitants concerning their future. The representative of India stated that administering powers had continued to maintain their intransigent attitude on the question of visiting missions, and the Assembly should use all its influence to ensure that that attitude changed.

Speaking in reply, the United Kingdom representative said that there had been substantial constitutional progress with regard to the process of decolonization in United Kingdom territories over the past year. Although the United Kingdom Government could not yet say exactly what the constitutional future of many of those small territories would be, it would be guided by the principles which it had adopted in the past: the wishes of the people concerned would be its main guide to action. In nearly all the territories, there was active discussion among the political parties and the public of the next stages in constitutional advance and the most appropriate legal status for each of them.

New Zealand's representative held the view that, for the remaining small territories, the greatest problems were their small size, remoteness and lack of resources. It was unlikely, therefore, that the Fourth Committee could in a few hours of debate deal usefully with the range of problems entailed in the future of such territories. In the New Zealand territories of Niue and Tokelau, it was the people themselves who wished to avoid haste in deciding their future.

At the conclusion of the debate, a draft resolution was submitted by Algeria, Burundi, Ethiopia, Ghana, India, Mauritania, Morocco, Sierra Leone, Somalia, Syria, Tunisia, the United Arab Republic, the United Republic of Tanzania, and Yugoslavia concerning the question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands.

By the preambular part of the text, the General Assembly would, among other things: express deep concern at the policy of some of the administering powers in establishing and maintaining military bases in some of the territories under their administration in contravention of the relevant General Assembly resolutions; deplore the attitude of the administering powers which continued to refuse to allow United Nations visiting groups to visit the territories under their administration; and state that it was aware of the special circumstances of the geographical location and economic conditions of these territories.

By the operative part of the resolution, the General Assembly would: (1) approve the chapters of the Special Committee's report relating to these territories; (2) reaffirm the inalienable right of the peoples to self-determination and independence; (3) call upon the administering powers to implement without delay the relevant resolutions of the General Assembly; (4) reiterate that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial territories and the establishment of military bases and installations in these territories was incompatible with the purposes and principles of the United Nations Charter and of the General Assembly's resolution (1514(XV)) on the granting of independence; (5) urge the administering powers to allow United Nations visiting groups to visit the territories and to extend to them full co-operation and assistance; (6) decide that the United Nations should render all help to the peoples of these territories in their efforts freely to decide their future status; and (7) request the Special Committee to continue to pay special attention to these territories and to report to the twenty-fourth (1969) Assembly session on the implementation of the resolution.

On 16 December 1968, the Fourth Committee approved the draft resolution as a whole by 74 votes to 1, with 16 abstentions. On 18 December, the General Assembly adopted the text, by a recorded vote of 89 to 2, with 22 abstentions, as resolution 2430(XXIII).

A separate vote was taken, both in the Fourth Committee and in the plenary meeting of the Assembly, on the paragraph declaring that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial territories and the establishment of military bases and installations in these territories was incompatible with the purposes and principles of the Charter and of the General Assembly's resolution (1514(XV)) on the granting of independence. The Fourth Committee approved the paragraph by 48 votes to 13, with 23 abstentions, and the General Assembly adopted it by a recorded vote of 68 to 16, with 29 abstentions.

(For text of resolution and details of the voting, see DOCUMENTARY REFERENCES below.)

DOCUMENTARY REFERENCES

Special Committee on Situation with regard to Implementation of Declaration on Granting of Independence to Colonial Countries and Peoples, meetings 583, 584, 594, 596, 597, 599-608, 611-613 616, 617, 619, 620, 628, 630, 644, 646-649.

GENERAL ASSEMBLY—23RD SESSION
Fourth Committee, meetings 1766, 1791-1802, 1814.
Plenary Meeting 1747.

A/7200/Rev.1. Report of Special Committee of Twenty-four (covering its work during 1968). Chapter I, sections IV and XI(d); Annexes I-IV; Chapter X: Swaziland; Chapter XI, Mauritius; Chapter XII: Seychelles and St. Helena; Chapter XVIII: Gilbert and Ellice Islands, Pitcairn and Solomon Islands; Chapter XIX: Niue and Tokelau Islands; Chapter XX: New Hebrides; Chapter XXI: Guam and American Samoa; Chapter XXII:

Annex 65

Extract from Mauritius Independence Order, 1968

THE MAURITIUS INDEPENDENCE ORDER, 1968

GN No. 54 of 1968

His Excellency the Governor directs the publication, for general information, of the Mauritius Independence Order, 1968.

Le Reduit,
6th March, 1968.

Tom VICKERS,
Deputy Governor.

THE MAURITIUS INDEPENDENCE ORDER 1968

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of March 1968
Present,
THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows –

(1) This Order may be cited as the Mauritius Independence Order 1968.

(2) This Order shall be published in the Gazette and shall come into force on the day on which it is so published:

Provided that section 4(2) of this Order shall come into force forthwith. -

2.-(1) In this Order-

"the Constitution" means the Constitution of Mauritius set out in the schedule to this Order;

"the appointed day" means 12th March 1968;

"the existing Assembly" means the Legislative Assembly established by the existing Orders;

"the existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty. in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Mauritius immediately before the appointed day but does not include any Order
revoked by- this Order;

"the existing Orders" means the Orders revoked by section 3(i) of this Order.

(2) The provisions of sections 111, 112, 120 and 121 of the Constitution shall apply for the purposes of interpreting sections 1 to 17 of this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.
Revocations.

(a) shall remain in force for such period, not exceeding twelve months, as the Assembly may specify in the resolution;
(b) may be extended in operation for further periods not ,exceeding twelve months at a time by a further resolution supported by the votes of a majority of all the members of the Assembly;
(c) may be revoked at any time by resolution of the Assembly.

CHAPTER III

CITIZIENSHIP

20.-(1) Every person who, having been born in Mauritius, is on 1lth March 1968 a citizen of the United Kingdom and Colonies shall become a citizen of Mauritius on 12th March 1968.

(2) Every Person who on the 11th March 1968, is a citizen of the United Kingdom and Colonies-

(a) having become such a citizen under the British Nationality Act 1948(a) by Virtue of his having been naturalized by the Governor of the former colony of Mauritius as a British subject before that Act came into force; or
(b) having become such a citizen by virtue of his having been naturalized or registered by the Governor of the former colony of Mauritius under that Act,

shall become a citizen of Mauritius on 12th March 1968.

(3) Every person who, having been born outside Mauritius is on 1lth March 1968 a citizen of the United Kingdom and Colonies shall, if his father becomes or would, but for his death have become a citizen of by virtue of subsection (1) or subsection (2) of this section, become a citizen of Mauritius on l2th March 1968.

(4) For the purposes of this section a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former colony of Mauritius immediately before 8th November 1965 but were not so comprised immediately before 12th March 1968 unless his father was born in the territories which were comprised in the colony of Seychelles immediately before 8th November 1965.

21.-(1) Any woman who, on 12th March 1968 is or has been married to a person-

(a) who becomes a citizen of Mauritius by virtue of the preceding section; or
citizens.
(b) who, having died before 12th March 1968 would, but for his death, have become a citizen of Mauritius by virtue of that section,

shall be entitled upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius.

Annex 66

Letter dated 24 April 1968 from L.J.P.J Craig, General and Migration Department, Commonwealth Office to J.R. Todd, Office of the Administrator "BIOT"

CONFIDENTIAL AND GUARD

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Commonwealth Office
S.W.1.

(GM 3/256/2)

24 April, 1968.

Dear Mr Todd,

Extension of Fishery Limits

As this Department is responsible for "law of the sea" which includes fishery limits, it has been agreed with Seller that I reply to your letter reference BIOT/54/61 of 15 February to him about fishery rights in Chagos and to the Governor's savingram No. 193 of 4 August 1967 about the extension of fishery limits around British Indian Ocean Territory as a whole and the Seychelles. There is much in this subject which is common to both territories but as separate legislation is required we are dealing with each in isolation, and I have already sent a savingram about the Seychelles. (37)

This letter deals primarily with the B.I.O.T. and we see no objection in principle to the enactment of legislation creating a 12 mile fishery zone around the territory. The Governor already has powers to legislate on fishery limits, but will need additional powers to make laws having extra-territorial effect. The latter can best take the form of a Proclamation modelled on that prepared for the Bahamas in similar circumstances. A copy of a draft of this Proclamation and of the United Kingdom Fishery Limits Act 1964 accompanied the savingram about the Seychelles.

It is of course relevant to legislation that the fishery limits be clearly defined, and we have asked in the savingram about the Seychelles for large scale detailed charts showing the base lines from which the new fishery limits are to be measured and their outer boundaries. It is also relevant that the law will need to be enforced and I should be grateful to know how you propose to undertake this. Doubtless special arrangements will be necessary once defence interests become a live issue, and it might be possible to extend these to cover the whole of the territory.

Any possible defence installations either on - say - Chagos or Farquhar have considerable bearing on free access to waters in their vicinity. The United States Government have agreed the basis on which arrangements might be made as you are aware from Seller's letter reference QC 7/1 of 12 July, 1967. The extended proposals have altered the position to some extent and we consider that we shall have to further consult the Americans in the light of any comment arising from this letter. (28)

/It

J.R. Todd, Esq.,
Office of the Administrator B.I.O.T.,
Victoria,
Seychelles.

CONFIDENTIAL AND GUARD

It is also necessary to consider what concessions should be granted to foreign Governments and it is unfortunate that there is so little information about foreign vessels which might have established "habitual fishing rights". It seems that both Japanese and Formosan vessels have at some time fished in Chagos waters. When the position is indefinite as it is here, it is the opinion of the Legal Adviser to the General Department of the Foreign Office that provision should be made for a reasonable phasing out period for all foreign fishing. This period should be at least one year as it will be difficult to deny to foreign boats including even those that cannot prove habitual fishing in the previous three years. Were there no defence interests such provision as part of an exclusive 12 mile zone would seem appropriate, but with defence interests in Chagos and Aldabra foreign vessels would presumably be undesirable. In the loosest term "foreign vessels" would include those of the Seychelles and Mauritius, but as you are aware, an undertaking was given to Mauritius Ministers to ensure that fishing rights remain available to Mauritius in the Chagos Archipelago as far as is practicable. Some rights are also claimed for Seychelles vessels in this area, but phase out rights would seem inappropriate to either Seychelles or Mauritian vessels. In these circumstances the application of an inner and outer 6 mile zone in accordance with current United Kingdom practice would seem preferable.

There would thus be 3 zones of fishing

(a) The full 12 mile zone open to Seychelles and Mauritius vessels before any defence interests became live and to an extent on which we would be grateful for your comments.

(b) The inner 6 miles open to Seychelles and Mauritius on a restricted access basis following defence arrangements, and

(c) The outer 6 miles open to foreign vessels for a phase out period subject also to defence limitations should these prove necessary.

/These

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These proposals are, incidentally, slightly more restrictive than those previously considered by the Americans and over which they saw no problem and we do not therefore foresee any difficulties over them.

Unfortunately it was not possible to put these revised suggestions to Mauritius before independence, and the matter rests with Seller's letter of 12 July 1967 to Sir John Rennie and his reply of 5 September 1967.

Yours sincerely

D.J. Craig

(L.J.P.J. Craig)
GENERAL AND MIGRATION DEPARTMENT

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Annex 67

Official Records of United Nations General Assembly, Twenty-Second Session, 1643rd Plenary Meeting, 24 April 1968, 3 p.m., UN Doc. A/PV.1643

United Nations
GENERAL ASSEMBLY
TWENTY-SECOND SESSION
Official Records

1643rd PLENARY MEETING

Wednesday, 24 April 1968, at 3 p.m.

NEW YORK

CONTENTS

President: Mr. Corneliu MANESCU (Romania).

Resumption of the twenty-second session

1. The PRESIDENT (translated from French): I declare open the 1643rd plenary meeting with which the General Assembly resumes its twenty-second session.

2. It gives me much pleasure to welcome the representatives who have come here to take part in our work. I take this opportunity to express the hope that, through our combined efforts, we will succeed in reaching fair decisions which will meet the aspirations of the world's peoples and serve the interests of international peace and security, in accordance with the ethics governing inter-State relations.

3. I should like to remind representatives that on 19 Decomber 1967 [1642nd meeting] the General Assembly agreed to give further consideration to the following three items: item 28 (a) (Non-proliferation of nuclear weapons: report of the Conference of the Eighteen-Nation Committee on Disarmament), item 64 (Question of South West Africa) and item 94 (The situation in the Middle East).

4. On that occasion the Assembly decided that the work of the session should be resumed when, after the necessary consultations, it was established that the conditions were appropriate for consideration of one of those items.

5. As a result of subsequent consultations, it was agreed that the conditions set by the General Assembly for the resumption of the twenty-second session were now present, and that the work of the session should begin today.

Organization of work

6. The PRESIDENT (translated from French): I now invite the Assembly to decide upon the procedure it wishes to follow in carrying out the work of this session. Representatives have, no doubt, taken note of the document [A/7090] which lists the three items remaining on the agenda of this session in accordance with the decision taken by the General Assembly on 19 December 1967.

7. At the beginning of the session the General Assembly referred item 28 (Non-proliferation of nuclear weapons) to the First Committee, requesting it to report to the plenary.

8. As a result of consultations which I have held, I understand that Member States wish the Committee so to organize its work as to ensure that this item is given careful scrutiny on the basis of the relevant documentation. If I hear no objection, may I take it that the Aseembly still wishes agenda item 28 (a) to be dealt with by the First Committee?

It was so decided.

9. The PRESIDENT (translated from French): With regard to item 64 (Question of South West Africa), I wish to inform the Assembly that the Chairman of the Afro-Asian Group, H.E. Ambassador Shahi of Pakistan, has conveyed to me the Group's request that the General Assembly begin its consideration of this item at once, on the understanding that plenary meetings of the Assembly and meetings of the First Committee will not take place at the same time.

10. I consulted as many representatives of Member States as I could during the short time at my disposal and I have reached the conclusion that it is generally felt that items 28 (a) and 64 should be discussed immediately, provided that the meetings on those two questions are not held concurrently. I should therefore like to consult the Assembly on this matter.

11. If there are no objections, may I take it that the Assembly agrees to that procedure?

It was so decided.

12. The PRESIDENT (translated from French): Agenda item 94 (The situation in the Middle East) will of course, as decided earlier, remain before the General Assembly.

13. During the period which has elapsed since we interrupted our work another sovereign and independent State, Mauritius, has emerged as a result of the irreversible process of decolonization. As we all know, the State of Mauritius has submitted an application for admission to membership in the United Nations [A/7073] and the Security Council has unanimously recommended that its application should be accepted [A/7083].

14. I understand from the exchanges of views I have had with representatives of certain States and geographical groups that the Assembly wishes to decide now on the application of Mauritius for admission to the United Nations. May I take it that the General Assembly agrees with this procedure?

It was so decided.

AGENDA ITEM 99

Admission of new Members to the United Nations (concluded)*

15. The PRESIDENT (translated from French): I wish to draw the General Assembly's attention to the draft resolution on agenda item 99 which has been submitted by a number of countries [A/L.545 and Add.1 and 2].

16. May I take it that the General Assembly adopts this draft resolution by acclamation?

The draft resolution was adopted by acclamation [resolution 2371 (XXII)].

17. The president (translated from French): I declare the State of Mauritius admitted to membership in the United Nations.

The delegation of Mauritius was escorted to the place reserved for it in the General Assembly hall.

18. The PRESIDENT (translated from French): I trust that I speak for all the Members of this Assembly in welcoming the young State of Mauritius to membership in the United Nations and in expressing to its Government and people our sincere congratulations and best wishes for their prosperity and for success in attaining their goals.

19. Mr. PARTHASARATHI (India): Mr. President, during the first part of the twenty-second session, my delegation had an opportunity to convey our greetings and felicitations to you on your assuming this high office and to salute your great nation as a bridge-builder and a pathfinder in Europe. Your masterly handling of the matters dealt with in the early part of the session has further confirmed us in our belief in your outstanding statesmanship and the dynamic and important role played by your great country in international affairs.

20. The resumed session has to consider important questions such as non-proliferation of nuclear weapons, the problem of South West Africa and the situation in the Middle East. My delegation has not the slightest doubt that under your able leadership the Assembly will be in a position to find adequate solutions to these intricate questions. We wish to assure you that my delegation will continue to extend the fullest co-operation to you in the performance of your tasks.

21. It is with great joy and pride that we welcome the emergence of Mauritius from colonial bondage to freedom and independence, and to its rightful place in this world body. My Prime Minister welcomed the independence of Mauritius with this message to the Prime Minister of Mauritius. She said:

> "On the historic day of attainment of independence by your country, my colleagues in the Government of India and I send our warmest felicitations to the Government and the people of Mauritius. . . . I want you to know that you have our most sincere good wishes for your personal happiness and welfare. May the people of Mauritius prosper under your wise, dedicated and distinguished leadership. We look forward to an era of friendship and co-operation between our two countries."

22. The attainment of independence by any nation is always a matter of pleasure and of great emotional satisfaction to all freedom-loving countries. However, if I seek to express today the particular gratification of my delegation at the independence of Mauritius, it is due to the long-standing, close and indissoluble ties which have bound our two countries together in deep friendship and amity. These ties are deeply rooted in our similar cultural heritage, our colonial history and struggle for independence, our geographic proximity and above all our mutually cherished goals of freedom for all dependent peoples and universal peace.

23. My delegation, along with several others, has keenly followed the progress of Mauritius towards independence. We have had the occasion to express our feelings from the forums of the United Nations and to encourage the people of Mauritius to carry on the fight for freedom, undeterred by any setback. It is, therefore, not only with joy but with profound satisfaction that my delegation welcomes Mauritius to the comity of nations.

24. May I be permitted to reiterate my delegation's warm and sincere felicitations to the Government and people of Mauritius. We are confident that Mauritius, known for the spirit of enterprise and the courage of its people, will grow into a strong and prosperous nation under the outstanding leadership of its great Prime Minister, Sir Seewoosagur Ramgoolam, and that it will be a dedicated and active Member of the United Nations, wedded as it is to the principles on which this body was founded. We are equally confident that independent Mauritius will join our common struggle for freedom, peace and progress and will make a valuable contribution to the various fields of activity of the United Nations.

25. Mr. RABETAFIKA (Madagascar) (translated from French): There can be no pleasanter duty for any delegation, and particularly for my own, than to welcome a new Member State to our great international family.

26. Mauritius's request for admission represents the culmination of the political evolution of that country which, having acquired independence, has clearly indicated that it wishes to play its full part in the concert of nations.

27. At a time when, in this troubled world of ours, certain basic values seem to be challenged, if not discarded, it is a source of pleasure and deep satisfaction to find once again that the principles of peace, tolerance, co-operation and mutual respect have not been advocated in vain.

28. Thus we are firmly convinced that Mauritius, by its tradition, its history and its culture, will make a contribution to our Organization the unique nature of which will in no way detract from its universal import.

29. Perhaps in an Organization such as ours one should not emphasize the quality of uniqueness, but we must admit that countries situated in the western part of the Indian Ocean have certain common attitudes, actions and reactions, which to some extent condition their participation in international life.

*Resumption of the debate of the 1630th meeting.

30. In so saying Madagascar is not attempting to act as a spokesman for anyone else; but the age-old and traditional relations which my country has enjoyed, first with the Ile de France and then with the island of Mauritius, give us some title to attempt to analyse the enriching phenomenon of diversity in unity.

31. These general considerations lead my delegation to pay a tribute to the people and Government of Mauritius, who have been able to rise above the circumstances of their past, harmonize them into a human and brotherly whole, and fully realize their desire for independence. That continuous and comprehensive growth has been made possible through the far-sightedness and determination of Sir Seewoosagur Ramgoolam, the Prime Minister, who is held in great and friendly esteem in Madagascar, both among its leaders and among the Malagasy people as a whole.

32. For many years, Madagascar has followed with a sympathetic interest the policy carried out by Sir Seewoosagur with the backing of the Mauritian people, a policy aimed at development, social progress and national well-being.

33. Because the Malagasy Government shares the belief that priority should be given to the growth of democracy, to the welfare of the most humble as well as the most highly favoured without discrimination, with an overwhelming concern for justice and equity, my delegation would like to assure the representatives of Mauritius that they can count on its brotherly co-operation so that these same principles to which we are so deeply attached may prevail in our Organization.

34. At a moment of such historic importance for the Mauritian people, my delegation could not fail to mention the role of the erstwhile administering Power. The act which establishes the international sovereignty of Mauritius is clearly in the line of the liberal tradition which has been in evidence over the past twenty-years. We rejoice, and we hope that the same willingness and the same determination will be maintained whatever happens, particularly in those painful situations which are a constant appeal to our consciences and our sense of freedom.

35. Mr. BERARD (France) (translated from French): Mr. President, there is no need for me to say what a great pleasure it is for me to speak once again with you in the Chair.

36. At the Security Council's meeting on 18 April [1414th meeting] I had an opportunity to say how happy the French delegation was to welcome the independent State of Mauritius to our Organization.

37. Of course we are always happy when a new State comes to join our family of nations, but we rejoice particularly when that new State is one which is so closely linked to my own country by historical and cultural ties.

38. It has been 150 years since Mauritius ceased to have any political relations with France, but in that great island French is still the everyday language of a large section of the population, the language of culture among its élite, and the language of communication between its different ethnic groups. My country is particularly touched by this faithful adherence to our common culture.

39. For more than two centuries, the relationship between our two countries has been one of cultural exchange. Mauritius and, as the poet says, "its happy shores dazzled by the flames of a monotonous sun" have markedly inspired several of our greatest novelists and poets, and French literature has been enriched in turn by the contributions of many Mauritian writers, from Léoville l'Homme to Malcolm de Chazal.

40. The Prime Minister of Mauritius, when he honoured us with a visit to our capital in October 1967, was kind enough to say that his country intended to co-operate with mine, especially in intellectual and economic matters, and that he wished to see agreements concluded between our countries strengthening the existing cultural and historical ties. My countrymen were particularly receptive to that statement, and it is the wish of France that the friendship and cultural co-operation between the two countries may continue.

41. From this rostrum, I should like to renew our warmest wishes for happiness and prosperity to the newly independent State of Mauritius, to its leaders and its people, and especially to Sir Seewoosagur Ramgoolam, its Prime Minister.

42. Mr. BUFFUM (United States of America): When the Security Council considered the application of Mauritius for membership in the United Nations just last week, the United States made it clear that we welcomed both the achievement of independence by Mauritius and its desire to participate fully in the work of this world Organization, with all the responsibilities, satisfactions and frustrations that United Nations membership entails.

43. Rather than reiterating the points made in our statement to the Council in support of the application of Mauritius, I should like to use this opportunity to extend a warm hand of friendship and welcome from the people and Government of the United States to all the people of Mauritius and to their distinguished Prime Minister, Sir Seewoosagur Ramgoolam, a leader who has commanded our respect for the important role he played in bringing his country to independence.

44. You, Mr. Prime Minister, represent a country whose population embraces diverse races, religions and nationalities. These diversities and your long history of dealing with them have provided that country with a wealth of experience with the problems, challenges, opportunities and richness which such diversities entail. We shall look to you to enrich us all by sharing that experience here at the United Nations.

45. We are gratified that you have joined us and we are determined to do all in our power, both as host country to the United Nations and as one of your fellow Members, to make your participation in this Organization enjoyable and satisfying. Our gratification and determination stem from a deep and renewed awareness of the meaning of independence for a former colony and of the importance which the concept of self-determination has under the United Nations Charter. Our gratification also stems from our realization of your determination to share responsibility

with all the other Members of the United Nations in seeking solutions to the world-wide problems which we face in common.

46. Mr. IGNATIEFF (Canada): Canada was happy to be a co-sponsor when last week the Security Council in resolution 249 (1968) recommended that the General Assembly admit Mauritius to membership in the United Nations. Therefore the Canadian delegation has particular reason to welcome the decision taken today by acclamation by the General Assembly, because of the special ties which this new Member of the United Nations has with Canada, since both our countries are members of the Commonwealth and both are bilingual in culture and tradition.

47. As a new nation in the world community, Mauritius faces a great challenge in the task of development. My country recognizes the responsibility of developed countries to assist those in the process of development to resolve the difficulties confronting them. Canada, for its part, is prepared to continue making available, through its external aid programme, technical assistance to Mauritius.

48. Mauritius has before it also great opportunities to participate in the valuable work of this Organization for peace and international co-operation, and we are particularly happy that on this auspicious occasion, when this association of Mauritius with the world Organization begins, the distinguished Prime Minister of this new nation, Sir Seewoosagur Ramgoolam, who has already contributed so richly to the political life and development of his country, should be present here in person, and I wish to express, on behalf of the Government and people of Canada, to the Prime Minister and to Mauritius our very best wishes for the future.

49. Mr. VAUGHAN (Barbados): It was a great honour and pleasure for the Barbados delegation to be a co-sponsor of the draft résolution [A/L.545 and Add.1 and 2] in accordance with which Mauritius has been admitted to membership of the United Nations.

50. After more than three centuries Mauritius, which has changed hands under no less than three imperialist Powers, has shaken off the shackles of colonial bondage and is now free. In the immediate circumstances in which it has occurred this is, by any standards, a great triumph, and we heartily congratulate the Government and people of Mauritius. Let me say too that my country, which became independent less than two years ago, shares to the full their aspiration and confidence in their ability to realize and maintain the ideals of the Charter of this Organization.

51. There are other respects in which my country is able to enter fully into the feelings of the Government and people of Mauritius at this hour. Mauritius is a predominantly agricultural country and, like Barbados, is tied to a sugar economy with all the problems and difficulties that such a nexus entails. It is not so densely populated as Barbados, yet it is a fact that economic and demographic pressures have, as in Barbados, contributed much to its constitutional development. Indeed, the same large-hearted, if somewhat self-willed, ruler who initiated a period of organic change in Barbados, went from there to Mauritius and effected a similar development. Above all, though comparatively small in land mass and population, Mauritius brings to this Organization an enlightened example of the way in which people of different races, religions, languages and cultures can co-exist peacefully and strive harmoniously for the common goals of human dignity, progress and self-respect. No greater contribution can be required from a country seeking membership of this great Organization.

52. Admittedly, there have been other agencies which have contributed to this great result. We applaud Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland for its co-operation in bringing Mauritius to independence. My Government is equally appreciative of the splendid work which is being done in the field of decolonization by the Committee of Twenty-Four and by other organs of the United Nations family. This places the struggle for independence by any colony within a wider ambit and gives to its people a clearer and nobler vision.

53. Mr. President, permit me once again to extend our warmest congratulations to the Government and people of Mauritius.

54. Mr. AKWEI (Ghana): Today, as the delegation of Mauritius takes its place in this great Assembly, the United Nations is once again adding another glorious page to the history of human freedoms and national independence.

55. On 12 March 1968 the Government and people of Ghana rejoiced with the Government and people of Mauritius on the accession of Mauritius to independent statehood.

56. Ghana, together with other members of the group of Commonwealth States, is gratified to have sponsored the resolution, which has just been adopted by acclamation, admitting Mauritius to membership in this world body. Now, as the current Chairman of the group of Commonwealth States, I take great pleasure and pride in welcoming Mauritius to membership of this Organization of equal sovereign States. Our pleasure derives from the conviction that this Organization has welcomed into its ranks the newest member State resolved to contribute its share to world peace and human brotherhood. Our pride springs from the happy outcome of the determination of the people of Mauritius in rejecting colonialism in all its forms and manifestations.

57. This Organization cannot fail at this time to look back with pride on the role which it has played in exerting pressure on the colonial Power to accelerate the independence of Mauritius. Mauritius, with its rich and varied culture, the island whose exotic enchantment was sung by some of the poets of the Parnassian and Symbolist movements in French literature, has had a long history of contact with the peoples of many nations. Out of this long period of contact Mauritius has emerged as the meeting point of different races and civilizations and now provides a much needed example of inter-racial co-operation. This phenomenon alone is a good qualification for Mauritius' membership in the United Nations and the Commonwealth of Nations—Organizations which span different races and cultures.

58. Let us take renewed hope and confidence from the success of Mauritius that the racist territories of Southern Rhodesia and South Africa and the oppressed people of South West Africa will also before long be ushered into the sunlight of freedom and independence. As Mauritius, with its multiracial society, joins this Organization we are encouraged in our resolve to exert every effort to eradicate the twin evils of colonialism and racism from the face of the earth.

59. The Ghana delegation welcomes the delegation of Mauritius as they take their seats for the first time in this Assembly. The representatives of Ghana pledge their fullest collaboration with the representatives of Mauritius in our work here. To the Government and people of Mauritius Ghana extends its warmest good wishes as they embark on the exciting but arduous task of nation building.

60. May the peaceful development and progress, on which Mauritius is already so happily launched, continue and expand to the satisfaction of its people and the advancement of world peace and prosperity.

61. Mr. OTEMA ALLIMADI (Uganda): The group of African States has bestowed on me the honour of extending to the newest Member of this Organization a very warm welcome to our midst. At the same time, and in the same representative capacity, I wish to extend to the delegation, the Government and the people of Mauritius our congratulations on having travelled successfully the very difficult road towards political independence, an experience which we in the liberated portion of Africa have every reason to commemorate.

62. We wish the Government and people of Mauritius the best of luck in all their endeavours to achieve their aspiration of national identity both at home and here in the family of nations. We extend to the delegation of Mauritius the friendly hand of co-operation in our joint deliberations in this Organization.

63. We hope that the General Assembly will in due course welcome to membership many countries which are not yet liberated; I have in mind countries from all regions of the world, including South West Africa and Rhodesia.

64. I wish also, on behalf of my delegation, to extend our sincere congratulations to the Government and people of Mauritius upon this historic occasion in the life of their country and, in a joyful spirit, to welcome the Mauritius representatives as the 124th delegation to be seated in this Hall.

65. Mr. BELOKOLOS (Ukrainian Soviet Socialist Republic) (translated from Russian): I should like, on behalf of the group of socialist countries, to express our sincere welcome to the new State Member of this Organization, Mauritius.

66. The birth of the independent State of Mauritius constitutes yet another success for the forces of the national liberation movement and proof of the invincibility of the people's struggle for freedom and independence against the system of exploitation imposed by colonialism and imperialism.

67. The people of Mauritius, who have been living under British colonial domination for more than a century and a half, have followed the road taken by many other former colonial peoples who, after a long, stubborn struggle, have freed themselves from colonial slavery and joined the family of independent States.

68. We wish to express our most sincere satisfaction at the Mauritian people's success in their legitimate struggle—a success which brings even closer the final abolition of the shameful system of colonialism.

69. In welcoming today the admission of the State of Mauritius to membership of the United Nations, the socialist countries, which call and have always called for a speedy and complete end to colonial rule, wish to convey to the Government and people of Mauritius their sincerest wishes for success in the speedy elimination of the onerous consequences of colonialism, the consolidation of their nation's sovereignty and the building of a new life, with progress and prosperity for their development as an independent nation.

70. Allow me also to express our confidence and hope that the State of Mauritius, as an independent country and a new Member of the United Nations, will be making its contribution, together with the other independent States of Asia and Africa, to the work of our Organization in the strengthening of peace and friendship among peoples.

71. Sir John CARTER (Guyana): In congratulating the Government and people of Mauritius upon their achievement of independence and in welcoming them to membership of the United Nations, I speak on behalf of a nation whose people sprang from origins as diverse as those of the people of Mauritius. It is especially for this reason that we welcome Mauritius here today, for we believe that plural societies such as those that our two countries have in common represent the true hope of the world. Such societies are a living witness of the evil lies of apartheid. In the self-respect which they offer to all their people, regardless of racial or cultural origins, such societies are in the vanguard of that true freedom which some day will triumph.

72. We express to His Excellency the Prime Minister our warmest good wishes, and our confidence that our two countries will find many opportunities here at the United Nations to work together for the benefit of the international community and of ourselves.

73. Mr. PIÑERA (Chile) (translated from Spanish): Mr. President, as we renew our confidence in the spirit of fairness with which you guide our debates, we also wish today to welcome a country that is with us for the first time. In renewing my country's confidence in you, allow me also to extend a special welcome to your family, which is with you and supports you.

74. In the United Nations family vast geographical and historical distances are forgotten in our adherence to the principles which make us neighbours and even brothers. Such are Mauritius and Chile, perhaps the two lands most remote from one another on earth: Mauritius in the Indian Ocean, and Chile very near the South Pole. However, this immense geographical distance does not prevent Chile from feeling very close to Mauritius.

75. The United Nations, based on the exercise of the sovereign independence of States, is greatly enriched by the presence of a new independent country. It is all the more enriched because the State of Mauritius has harmoniously integrated aspirations derived from many diverse origins, religions and cultures. Nations gain autonomy by sharing needs and difficulties.

76. Mauritius has a rural population with the highest density in the world, and a rapidly rising birth rate. That is a direct challenge to the courage and unity of this new Member of the United Nations, which today sets us a new example.

77. This is not my delegation's first contact with Mauritius. A few weeks ago at New Delhi, at the United Nations Conference on Trade and Development, we had the honour to welcome Mauritius as a new member of that great body and to work with it on more than one committee in the defence of common views. For us, therefore, Mauritius is more than the 124th State Member of the United Nations: it is a country with which we have already worked and hope to continue to work in the defence of our common interests.

78. With deep emotion I welcome this new Member to the community of nations today; and I would add that Mauritius is joining this Organization at the culmination of its history. Its presence will bring even closer the long-sought universality of the United Nations, which expects a bold and original contribution from Mauritius.

79. I wish today modestly to convey the greetings of the Government and people of Chile to the people of Mauritius, so ably represented by their Prime Minister Sir Seewoosagur Ramgoolam. Chile extends its most fraternal welcome to the rulers and people of Mauritius.

80. Mr. KJARTANSSON (Iceland): It is a great privilege to welcome Mauritius to membership in our Organization. I do so on behalf of those members of the group of Western European and other States that have not already spoken or are not going to speak individually for themselves. So many eloquent words have already been spoken that I believe I can limit myself to joining in the chorus of congratulations and good wishes. The advent of a new and independent State to the community of nations is always a joy. For me as a representative of an island country, it is a particular pleasure to welcome the distinguished Prime Minister and the delegation of another island nation. I wish to assure them that my country, as well as all the members of the group of Western European and other States, is looking forward to friendly and fruitful co-operation with them within this world Organization.

81. Mr. SHAHI (Pakistan): Mr. President, my delegation takes great satisfaction in the fact that you will be presiding over this resumed session of the General Assembly which is charged with the consideration of some of the most momentous issues that have confronted the United Nations. I shall have several opportunities, in due course, to state the views of my Government on the question of South West Africa and on the action to be taken on the draft non-proliferation treaty submitted to the General Assembly by the two Co-Chairmen of the Eighteen-Nation Disarmament Committee.

82. On this occasion I should like to extend the sincere felicitations of my Government to Sir Seewoosagur Ramgoolam, to his Government and to the people of Mauritius on the unanimous admission of their country to membership of the United Nations. Speaking in the Security Council on 18 April last, I expressed confidence

> "... that the Government of Mauritius will surmount the difficulties that confront new nations" in general "and will do its utmost to promote respect for human rights, a fundamental principle of the Charter... and one of cardinal importance to the governments of multiracial societies."

83. It is not necessary for my delegation to dwell at this moment on the many ties of history and culture that the people of Mauritius have in common with the people of Pakistan. With the achievement of independence by the island, these links are reinforced by the political interest of Pakistan in the preservation of the independence and sovereignty of Mauritius and in the promotion of the prosperity and welfare of the communities that constitute its people. Under Sir Seewoosagur Ramgoolam's dedicated and inspiring leadership, we have not doubt that the people of Mauritius will realize their deepest aspirations.

84. It is my privilege and pleasure, on behalf of all the Asian States Members of the United Nations, to extend our warmest welcome to Mauritius as it joins our ranks and to express our best wishes to its people in their march along the high road of independence.

85. Lord CARADON (United Kingdom): We warmly welcome you, Mr. President, on your return to direct our deliberations, and all of us rejoice today in welcoming a new Member to the United Nations. Especially we of the Commonwealth welcome Mauritius to this world assembly of free nations.

86. In the Commonwealth we are proud of the equality amongst us. Now that Mauritius has become the twenty-seventh independent nation of the Commonwealth, we welcome it as an equal partner. We boast that amongst us there is no precedence and no privilege on grounds of age or size or geography or race or origin. The last shall be first and the first shall be last. It was President Nyerere of Tanzania who said:

> "The Commonwealth binds together in friendship and likemindedness the astonishing variety of nations great and small, without distinction between them and without discrimination amongst them."

87. My country had responsibility in Mauritius for more than a hundred and fifty years. The people of the island have advanced to independence on a well-trodden road. They have advanced, as in other countries under British administration, through adult suffrage, through representative government, with the executive responsible to the elected legislature, and with an independent judiciary. There was eventually a series of constitutional conferences and then a final general election in which all the people were able freely to express their views before independence was achieved.

88. These are the methods which have been tested and tried in the Commonwealth, and I warmly acknowledge, in particular, the generous comment on that record made this afternoon by the representatives of Madagascar, Barbados and other States. It is on this broad road of free government that the peoples of the Commonwealth, a quarter of the population of the whole world, have advanced to nationhood.

89. We are glad, I am sure, that the Prime Minister of Mauritius, the Hon. Dr. Seewoosagur Ramgoolam, could be here to listen to the speeches of welcome today. He has long been an outstanding leader among his people. Twenty years ago he advanced with his party to win in the first elections held in Mauritius under adult suffrage. He has always been robust and positive and progressive, a happy warrior in the rough-and-tumble of democratic political life. To him most of all is due the credit for the courageous decision to go forward confidently into independence. He knows as well as anyone the difficulties and indeed the dangers which his country faces, and all of us will join today in wishing him and all his countrymen well, in the hope that under resolute leadership Mauritius will draw from its rich diversity strength and unity for the future.

90. We specially wish the Prime Minister well in his reconstruction and development programme. Many are giving practical support, including support through the Commonwealth Assistance Plan and the United Nations Development Programme. British aid will continue: in this financial year it stands at over 4,000,000 pounds.

91. On this happy day, all of us—French and English, African and Asian, East and West—have vied with each other in a competition of congratulation and a chorus of sincere good wishes. May our international unanimity be a welcome augury for the future of Mauritius, a future, so we pray, of unity and harmony and increasing good fortune.

92. The PRESIDENT (translated from French): I have the honour and the pleasure to invite H.E. Sir Seewoosagur Ramgoolam, the Prime Minister of Mauritius, to address the General Assembly.

93. Sir Seewoosagur RAMGOOLAM: Mr. President, I should like to express to you and to all the distinguished representatives my cordial thanks for the admission of my country to the United Nations. My special thanks go to those Member States which have so generously sponsored and co-sponsored our application for membership. It is gratifying to acknowledge the wide response and welcome Mauritius has received from Members of the United Nations. By this act, you have given formal consecration to the accession of Mauritius to the status of a sovereign independent State. Although I come from a small country, my Government and the people of Mauritius are very conscious of the honour of belonging to this great Assembly, and we can assure you that we shall strive to uphold the great ideals which are enshrined in the Charter of the United Nations and will play fully our part in the struggle for justice, racial equality, peace and understanding among nations.

94. This is indeed a solemn moment in the history of my country. I stand here in all humility, in the midst of this great world community as the symbol of the hope of my people that through the effort of the United Nations mankind will really see the ultimate fulfilment and practical realization of the principles and purposes to which men and women in this august Assembly have dedicated themselves. In that grand and noble endeavour, we as a small nation will bring our contribution, however modest it may be, to the shaping of the destiny of a better world—a contribution which we hope will lead towards a new and broader world civilization in which man's essential needs will transcend considerations of national self-interest.

95. I also bring to you, Mr. President and distinguished representatives, the greetings and good wishes of my country which after successive periods of colonization by the Dutch, the French and the British, is now looking forward to an era of fruitful collaboration and partnership with all nations.

96. Mauritius has a rich historical background and it has in the past played a notable part in some of the great events which have moulded the course of history. Mauritius is a densely populated island, and over an area of 720 square miles live a population of almost 800,000. It is a view commonly held among some scholars that our island was visited by Dravidian seamen in pre-Aryan days, and during the time of their great awakening, the Arabs sighted Mauritius in the early part of the Christian era while plying between India and the Red Sea.

97. However, it was the Dutch who took formal possession of the Island in the 17th century and gave it its present name. But colonization proper was started earnestly by the French who succeeded the Dutch, and France has left its lasting imprint on the history of Mauritius. Such indeed has been the impact of French culture and civilization on the life of the people that even those who came from other lands have been profoundly influenced by it. The meeting of the peoples of Asia, Africa, and the West in Mauritius has enriched our precious heritage, and as I said in France during my last visit:

> "Sovereign Mauritius will ally itself still more closely with France, as with the other countries from which our forefathers came. Thus this remote island in the Indian Ocean will become one of the most important meeting places of East and West."[1/]

98. Towards the end of the Napoleonic Wars, in 1810, Britain conquered Mauritius. Because of the island's proximity with India, Mauritius was captured from the French with the help of Indian troops from Bengal, Madras and Ceylon. British power in the Indian Ocean became supreme after the annexation of Mauritius to the British Crown and British rule was to last until the accession of Mauritius to independence on 12 March 1968. In the course of European colonization of Mauritius, people from Africa and Asia came to its shores and they have all played a decisive part in the progress and development of the island. Ever since, the people of Mauritius have been trying to promote the maintenance of contrasted cultures within the framework of a wider community to which each group could contribute its own share.

1/ Spoken in French.

99. It is indeed true to say that although Mauritius has drawn its cultural inspiration from Africa, Asia and Europe, yet it has succeeded to a remarkable degree in evolving a distinct Mauritian way of life. The visitor to Mauritius is impressed by the fact that the average Mauritians have more in common with each other than with the native inhabitants of the land of their forbears. Indeed, it has been the privilege of my small country that its citizens have inherited the influence of the best traditions of the East and of the West. And this influence is noticeable in the works of our poets and writers as has just been pointed out by many speakers who have preceded me.

100. I spoke a little while ago of the basic principles of the United Nations and of its work for the oppressed peoples who have been struggling for the recognition of their rights to nationhood. We are all here pledged to this great ideal, and indeed all Member States have with great fervour and dedication been working to achieve these great ends we all hold in common. But it is still unfortunately true that in many areas of the world denial of human rights, hatred and violence are still raising their ugly heads, and human beings are being subjected to segregation from one another because of the colour of their skin or their ways of life which appear alien to the selfish outlook of a small minority. It is a statistical fact that more than half of the world's population is forced to live in conditions where human dignity and social justice have hardly any meaning. Even in some of the progressive countries which have been the bulwark of democracy, men of goodwill are constantly trying to find a formula by which the under-priviledged can banish inequality and fear and aspire to a place in the sun.

101. We in Mauritius have a long tradition of mutual respect, tolerance and understanding, despite the occasional evil exploitation of our diversity. Our social customs and habits have transcended racial and cultural differences. Although much has been achieved in the past two years in the field of economic and social development, Mauritius, like other developing countries, is bedevilled by the rapid rate of population growth. As a sequel, unemployment is a cause of great anxiety, for the rapid increase in the birth rate is a constant and positive threat to our present standard of living. We are taking steps to contain this serious population explosion, and to counteract it a comprehensive programme of family planning is being launched.

102. Fully conscious of the seriousness of the problem, the Mauritian Government has embarked on the diversification of our economy. Great efforts are also being made to stimulate the production of tea, tobacco and food crops, and a number of manufacturing industries have been set up. We have also been giving careful consideration to the possibilities of emigration as a means of easing our unemployment problem. In this respect I am glad to say that a large number of Mauritians who have emigrated to countries like Britain, Australia and Canada are actively contributing towards the development of those countries. I should like to add that Mauritian workers are efficient, intelligent and adaptable, and have proved to be an asset to those countries which have welcomed them. We all know that there are yet many large areas of the world available for settlement, whereas in other territories like Mauritius there is a serious surplus of human resources. It is precisely in this vital task of revolutionizing the social and economic set-up of Mauritius that my people are looking forward to a close and fruitful partnership with Member States of the United Nations.

103. Here, with your permission, Mr. President, I should like to avail myself of this opportunity to express the gratitude of my Government and my country for the help and assistance that have already come to us from these quarters and the various United Nations agencies; and I might add in this context how deeply indebted we are to countries like Britain, France, India, Canada, Australia, New Zealand, the United States of America and Pakistan, which have sympathized in a practical way with the problems we have been facing.

104. We are very much aware of the fact that economic stability and world peace depend so much on the understanding between individual groups at a national level, as well as in the field of international relations, and on the success achieved by many countries in their efforts to give a reasonable standard of living to their populations. It is in this great task of bridging the gap between the rich and the poor that we join our efforts to dedicate ourselves, together with other Member States forming part of this Assembly.

105. To conclude, allow me on behalf of my delegation and my country to renew our pledge to carry out our obligations under the United Nations Charter and our firm determination to stand by the great principles which inspire this comity of nations in its pursuit of peace and happiness.

106. The PRESIDENT (translated from French): I thank the Prime Minister of Mauritius for his statement.

107. I should like to inform the Assembly that the flag of the new Member State will be hoisted at a ceremony scheduled to take place tomorrow at 2.45 p.m., in front of the delegates' entrance.

The meeting rose at 4.45 p.m.

Litho in U.N.,

77001—October 1970—2,300

Annex 68

Letter dated 6 September 1968 from A. Brooke Turner, UK Foreign Office to K.M. Wilford, British Embassy, Washington, FCO 31/134

24A

CONFIDENTIAL

FOREIGN OFFICE, S.W.1.

(ZD 1/2/6)

6 September, 1968

Fishery Limits, B.I.O.T.

You will recall that in my letter ZD 4/47 of 18 October 1966 to Chancery, Washington, I gave some indication of how we were thinking on the subject of fishery limits in the British Indian Ocean Territory. The extent and application of these limits is, of course, complicated by the fact that the islands concerned are available for defence purposes and fishing near them may therefore be subject to security restrictions. In his reply 119101 of 27 February 1967 to Berthoud, Gilmore wrote that the proposals in my letter under reference seemed acceptable to the United States Government.

2. We have now given this subject further thought. One of the complicating factors in the situation is the need to consider what concessions should be granted to foreign governments when the time comes to phase fishing rights around the islands of the Territory. Unfortunately, there is little information about what foreign vessels might have established "habitual fishing rights": it seems that both Japanese vessels and vessels from Taiwan may at some time have fished in the waters of, for instance, the Chagos Archipelago. When the position is indefinite, as it is here, it is the opinion of the Legal Advisers that provision should be made for a reasonable phasing-out period for all foreign fishing. This period should be at least one year since it will be difficult to deny fishing rights at less notice to foreign boats including even those that cannot prove habitual fishing in the previous three years. Were there no defence interests, such provision, as a preliminary to the establishment of an exclusive 12 mile zone, would seem appropriate; but given the defence interest, the presence of foreign vessels fishing in the vicinty of some of these islands might prove undesirable at an earlier stage.

/In

K. M. Wilford, Esq., C.M.G.,
British Embassy,
Washington.

CONFIDENTIAL

In the loosest sense, the term "foreign vessels" might be taken to include those of the Seychelles and Mauritius; however, as you probably know, an undertaking was given to Mauritius Ministers to ensure that fishing rights remain available to Mauritius in the Chagos Archipelago as far as is practicable; some rights are also claimed for Seychelles vessels in that area. Phase-out rights would therefore seem inappropriate to either Seychelles or Mauritius vessels. In these circumstances the application of an inner and outer 6 mile zone in accordance with current United Kingdom practice would seem preferable.

3. We have therefore come to the conclusion that there should be three zones for fishing in the territory:

(a) a full 12 mile zone open to unrestricted exploitation by Seychelles and (for Chagos only) Mauritius vessels before any defence interests become alive;

(b) an inner 6 mile zone open to Seychelles and (for Chagos only) Mauritius vessels on a restricted access basis following defence arrangements, such restriction to be the minimum compatible with security requirements;

(c) an outer 6 mile zone open to foreign vessels for a phase-out period. (This zone would remain open to Seychelles and Mauritius vessels after the phase-out period had been completed, unless security requirements made this impossible.)

4. No decision has yet been taken here as regards timing, but we think there would be advantage, particularly in view of the recent American approach about plans for the development of Diego Garcia, in announcing our decision to establish the fishing regime for B.I.O.T. on the lines outlined in the preceding paragraph as soon as possible. If an announcement of Her Majesty's Government's intent were made sufficiently in advance of the actual establishment of the fishing regime (i.e. at least one year) our Legal Advisers consider that it could then be argued that the Japanese and Taiwanese had in effect been accorded their phasing-out period, and then the only "foreign" fishing interests remaining to be considered would be those from the Seychelles and Mauritius. This would greatly ease our difficulties, particularly on the timescale. The only alternative is to announce the establishment of the fishing regime with a phasing-out period written in. There would then be a delay of several months before we were in a position to make such an announcement since there would

/have

have to be much legal groundwork first. There would be no such delay if we merely announce "intent" now, with the announcement of establishment following in due legal form 12 months hence.

5. Before proceeding further, we would be grateful if you could put our proposals to the State Department and ask them for an early indication of whether they are acceptable to them: you should draw on paragraph 2 above for your argumentation.

6. I am sending copies of this letter to Seller in Pacific and Indian Ocean Department, Counsell in East Africa Department, Stewart in DS 11 (Ministry of Defence) and Todd in an Office of the Administration of the B.I.O.T. (Seychelles).

(A. Brooke Turner)

Annex 69

Telegram No. 3129 dated 22 October 1968 from British Embassy, Washington to UK Foreign and Commonwealth Office, FCO 141/1437

CONFIDENTIAL

(1) (47)

CYPHER/CAT A

PRIORITY WASHINGTON TO FOREIGN AND COMMONWEALTH OFFICE

TELEGRAM NO 3129 22 OCTOBER, 1968

(41)

CONFIDENTIAL.

(12)

BROOKE TURNER'S LETTER ZD 1/2/6 OF 6 SEPTEMBER: FISHERY LIMITS B.I.O.T.

SUBJECT TO AN IMPORTANT QUALIFICATION, DEPARTMENT OF DEFENCE HAVE NO OBJECTION TO THE ESTABLISHMENT OF A FISHERY REGIME ON LINES OF THAT PROPOSED IN PARAGRAPH 3 OF LETTER UNDER REFERENCE. THEY SEE NO NEED, HOWEVER, TO DEFINE THE LIMITS BY REFERENCE TO DEFENCE ARRANGEMENTS, OR SECURITY INTERESTS, SINCE TO DO SO, APPEARS TO THEM, TO BLUR THE ESSENTIAL DISTINCTION BETWEEN CONTROL BY THE COASTAL STATE OF THE TERRITORIAL SEA, AND CONTROL OVER FISHING IN THE CONTIGUOUS ZONE. INCLUSION OF REFERENCES TO DEFENCE ARRANGEMENTS AND TO SECURITY REQUIREMENTS SERVES NO DEFENCE NEED AS SUCH. THE DEPARTMENT ACCORDINGLY CONSIDERS SUCH REFERENCES SHOULD BE EXCLUDED FROM ANY PUBLIC NOTICE OR LEGISLATION.

2. THE STATE DEPARTMENT IN CONCURRING WITH THIS, SEE NO REASON FOR ADDITIONAL COMMENT.

SIR P. DEAN

FILES
DEFENCE POLICY DEPT.
P.& I.O.D.

Registry.

CONFIDENTIAL Please copy to:

Mr. Donohue (UN Pol Dept)
Mr. Pond (E Afr Dept)
Mr. Ayre (Av. Marine & Tel. Dept)
Mr. I.M. Stewart (DS 11, MOD)
Sir H. Norman Walker (MoD)

Annex 70

"Brief Reference Note on the British Indian Ocean Territory" by C.B.B. Heathcote-Smith, UK Foreign and Commonwealth Office, 19 December 1968

Brief Reference Note on the British Indian Ocean Territory.

Composition of the B.I.O.T.

The British Indian Ocean Territory was established by Order in Council on 8 November 1965. It comprises the Chagos Archipelago, detached from Mauritius of which it was previously a dependency; and the Farquhar Islands, the Aldabra Group and the Island of Desroches, all detached from the Colony of Seychelles, of which they were previously a part.

Previous History.

2. All the islands originally had links with Mauritius. Mauritius was captured from the French in December 1810 and by the Treaty of Paris, 1814, the British title to it was confirmed. The Treaty cited Mauritius and its Dependencies "especially Rodrigues and the Seychelles", which presumably included the Chagos Archipelago, where towards the end of the 18th Century a plantation was set up by a French Mauritian under a concession granted by Mauritius. In 1903 Mauritius and Seychelles became separate Colonies, and the Amirantes were specifically designated as Dependencies of Seychelles. In 1908 Coetivy Island and in 1921 the Farquhar Islands were also detached from Mauritius and made part of the Seychelles Colony. There are therefore ample precedents for detaching islands in this area of the Indian Ocean from one administration and placing them under another.

Distances in the B.I.O.T.

3. The British Indian Ocean Territory covers a vast area of ocean. The Chagos Archipelago is the remotest of all, being almost 1,100 miles due East of the Seychelles and over 1,400 miles N.E. of Mauritius. The Chagos Islands incidentally are about 400 miles almost due South of Gan Island, the staging post in the Maldive Islands.

4. The other B.I.O.T. islands are all much nearer to the Seychelles group, which itself is about 700 miles N-N.E. of Diego Suarez at the northernmost tip of Madagascar, and over 1,000 miles East of Mombasa. Desroches Island is about 150 miles S.W. of Mahe Island, the capital of the Seychelles group, and Aldabra 700 miles S.W. of Mahe and about 400 miles E. of the nearest point on the mainland of Africa. Farquhar Island is about 300 miles East of Aldabra, 400 miles N. of Diego Suarez and some 500 miles S-S.W. of Mahe.

/5.

Chagos Archipelago.

5. (1) Geographical.

The Archipelago comprises six scattered groups of islands around a huge shoal area, the Great Chagos Bank covering 21,000 square miles of ocean. The distance from North to South, from Peros Banhos to Diego Garcia, is about 120 miles, and the Bank covers about 100 miles from East to West. The islands or groups of islands are the following:-

(a) Diego Garcia. The most important. 17 square miles in area, 31 miles long by 1¼ miles to 40 yards wide, shaped like a rough 'V' around a large lagoon 12 to 16 fathoms deep providing good anchorage. 4,500 acres are covered with coconut plantations. There are about 1,000 acres of high forest.

(b) Peros Banhos. An atoll of 29 islands with a land area of about 5 square miles. Lagoon covers about 120 square miles. There are some coconut plantations.

(c) Salamon Islands. An atoll of 11 islands, covering altogether some three square miles of land area. There are about 1,000 acres of coconut plantations.

(d) Egmont or Six Islands. Uninhabited with fairly dense vegetation, capable of being developed for plantations.

(e) Three Brothers Islands.

(f) Nelson or Legour Island.

(g) Eagle Island

(h) Danger Island.

(2) Population

(a), (b) and (c) above are the more important islands or groups of islands, having plantations and workers, with families, to work them. Egmont Islands are uninhabited, but capable of being developed. The other islands are very small and uninhabited though a number formerly had coconut plantations. The population figures fluctuate according to the number of people employed on the plantations, but in May 1967 the populations were as follows:-

/Diego Garcia

Diego Garcia	503
Peros Banhos	253
Salamon Islands	168
Total	924 (Of these about half were 'Ilois', that is persons, mainly of Mauritian origin, born on the islands; the others are mainly Seychellois.)

(3) Other Factors.

The Chagos has good fishing on the Great Chagos Bank, and has been a source of supply of turtles and fish for Mauritius. Japanese tuna fishing fleets also visit the Bank. On Diego Garcia a Meteorological Station operated by Mauritius has been collecting surface data only, but in 1963, observation of the Upper Air began with United States National Science Foundation funds. In 1964 the World Meteorological Organisation provided funds for further Upper Air observations. The Meteorological Station's main value to Mauritius has been in providing information in regard to cyclones.

6. Aldabra Group.

Has the largest island in the Territory. An atoll of one large and three small islands, 18¾ miles long by up to 7¼ miles wide. Total land area about 60 square miles. The lagoon is shallow, but capable of being developed as an anchorage at some cost. Land surface limestone, and sand dunes rising to 50 ft. in some places. Not suitable for coconuts.

Population (March 1968) was 34, comprised of workers on the fishing and turtle concession let to a Seychellois.

7. Aldabra is a natural wild life reserve with interesting flora and fauna. It is one of the principal homes of the Giant Tortoise, the Frigate Bird, the Pink Footed Booby, the Flightless Rail, the Green Turtle and the Sacred Ibis, etc.

In 1967-68 an expedition from the Royal Society spent six months on the island.

8. Surveys already carried out indicate that several sites would be available for the 12,000 ft. airfield. However there is a considerable bird strike hazard, particularly from the Frigate bird.

/9.

9. Farquhar Island

An atoll 10 miles by 5 miles in extent, with nine islands around a shallow lagoon providing rather poor anchorage facilities. Total land area 2½ square miles; siting for an airfield would be rather difficult. Some coconut plantations (were worked by Seychelles concessionaires). In the cyclone belt.

Population 1967 - 172.

10. Desroches.

A small sand cay on the southern edge of a circular atoll. Land area 1.87 square miles (800 acres). The lagoon provides some anchorage. Coconut plantation managed by a Seychelles company.

Population (July 1967) - 98.

(C.B.B. Heathcote-Smith)
19 December, 1968.

Annex 71

United Nations General Assembly, Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, UN Doc. A/7619, 1969

REPORT OF THE SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FOURTH SESSION

SUPPLEMENT No. 19 (A/7619)

UNITED NATIONS

New York, 1969

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Section 2. The principle of equal rights and self-determination of peoples 44/

A. Texts before the Special Committee

137. As was recalled in paragraph 17 of the introduction, the Special Committee, at its previous sessions, was unable to arrive at any agreed statement of the above principle. At the 1969 session of the Special Committee a new proposal was added to those submitted to the Special Committee at its 1966 and 1967 sessions. Consequently, the following proposals and amendments concerning the principle of equal rights and self-determination of peoples were before the Special Committee:

(a) The proposal contained in part VI of the draft declaration submitted to the Special Committee in 1966 by Czechoslovakia (A/AC.125/L.16);

(b) The proposal submitted in 1966 by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic, and Yugoslavia (A/AC.125/L.31 and Add.1-3);

(c) The proposal submitted to the Special Committee in 1966 by the United States (A/AC.125/L.32);

(d) The amendment to the Special Committee in 1966 submitted by Lebanon (A/AC.125/L.34) to the foregoing United States proposal;

(e) The proposal contained in part VI of the draft declaration submitted at the Special Committee's 1967 session by the United Kingdom (A/AC.125/L.44);

(f) The proposal contained in the draft declaration submitted at the Special Committee's 1967 session by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48); and

(g) The amendment proposed in 1967 by Ghana (A/AC.125/L.50) to the foregoing ten-Power proposal;

(h) The proposal submitted in 1969 by Czechoslovakia, Poland, Romania and the Union of Soviet Socialist Republics (A/AC.125/L.74).

The texts of the foregoing proposals and amendments are given below in the order in which they were submitted to the Special Committee, the text of the amendment following the proposal it was intended to amend.

44/ An account of the consideration of this principle by the Special Committee at its 1966, 1967 and 1968 sessions appears respectively in Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, chapter VII, paragraphs 456-521; ibid., Twenty-second Session, annexes, agenda item 87, document A/6799, section 3, paras. 171-235; and ibid., Twenty-third Session, agenda item 87 document A/7326, chapter II, section 2, paras. 135-203.

138. Proposal submitted in 1966 by Czechoslovakia (A/AC.125/L.16, part VI): 45/

1. All peoples have the right to self-determination, namely the right to choose freely their political, economic and social systems, including the rights to establish an independent national State, to pursue their development and to dispose of their natural wealth and resources. All States are bound to respect fully the right of peoples to self-determination and to facilitate its attainment.

2. Colonialism and racial discrimination are contrary to the foundations of international law and to the Charter of the United Nations, and constitute impediments to the promotion of world peace and co-operation. Consequently, colonialism and racial discrimination in all their forms and manifestations shall be liquidated completely and without delay. Territories which, contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power.

3. Peoples have an inalienable right to eliminate colonial domination and to carry on the struggle, by whatever means, for their liberation, independence and free development. Nothing in this Declaration shall be construed as affecting the exercise of that right.

4. States are prohibited from undertaking any armed action or repressive measures of any kind against peoples under colonial rule.

139. Proposal submitted in 1966 by Algeria, Burma, Cameroon, Dahomey, Ghana, India, Kenya, Lebanon, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.31 and Add.1-3): 46/

1. All peoples have the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

2. In accordance with the above principle:

(a) The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations and, as such, is a violation of international law.

(b) Consequently peoples who are deprived of their legitimate right of self-determination and complete freedom are entitled to exercise their inherent right of self-defence, by virtue of which they may receive assistance from other States.

45/ Ibid., Twenty-first Session annexes, agenda item 87, document A/6230, para. 457.

46/ Ibid., para. 458

(c) Each State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country.

(d) All States shall render assistance to the United Nations in carrying out its responsibilities to bring about an immediate end to colonialism and to transfer all powers to the peoples of territories which have not yet achieved independence.

(e) Territories under colonial domination do not constitute parts of the territory of States exercising colonial rule.

140. Proposal submitted in 1966 by the United States of America (A/AC.125/L.32): 47/

1. Every State has the duty to respect the principle of equal rights and self-determination of peoples.

2. Applicability of the principle of equal rights and self-determination of peoples in particular cases, and fulfilment of its requirements, are to be determined in accordance with the following criteria:

A. (1) The principle is applicable in the case of:

(a) A colony or other Non-Self-Governing Territory; or

(b) A zone of occupation ensuing upon the termination of military hostilities; or

(c) A trust territory.

(2) The principle is prima facie applicable in the case of the exercise of sovereignty by a State over a territory geographically distinct and ethnically or culturally diverse from the remainder of that State's territory, even though not as a colony or other Non-Self-Governing Territory.

(3) In the foregoing cases where the principle is applicable,

(a) The power exercising authority, in order to comply with the principle, is to maintain a readiness to accord self-government, through their free choice, to the people concerned, make such good faith, efforts as may be required to bring about the rapid development of institutions of free self-government, and, in the case of Trust Territories, conform to the requirements of Chapter XII of the Charter of the United Nations;

(b) The principle is satisfied by the restoration of self-government, or, in the case of territories not having previously enjoyed self-government, by its achievement, through the free choice of the people concerned. The achievement of self-government may take the form of:

(1) Emergence as a sovereign and independent State;

(2) Free association with an independent State; or

(3) Integration with an independent State.

47/ Ibid., para. 459.

B. The existence of a sovereign and independent State possessing a representative Government, effectively functioning as such to all distinct peoples within its territory, is presumed to satisfy the principle of equal rights and self-determination as regards those peoples.

141. Amendment submitted in 1966 by Lebanon (A/AC.125/L.34) 48/ to the above proposal by the United States of America:

1. In the introductory phrase of paragraph 2 A (1), replace "The principle is applicable in the case of" by "The principle is applicable on".

2. At the beginning of sub-paragraph 2 A (1) (b), add the following: "the indigenous population of".

142. Proposal submitted in 1967 by the United Kingdom of Great Britain and Northern Ireland (A/AC.125/L.44, part VI): 49/

1. Every State has the duty to respect the principle of equal rights and self-determination of peoples and to implement it with regard to the peoples within its jurisdiction, inasmuch as the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation. The principle is applicable in the case of a colony or other Non-Self-Governing Territory, a zone of military occupation, or a Trust Territory, or, subject to paragraph 4 below, a territory which is geographically distinct and ethnically or culturally diverse from the remainder of the territory of the State administering it.

2. In accordance with the above principle:

(a) Every State shall promote, individually and together with other States, universal respect for an observance of human rights and freedoms.

(b) Every State shall accord to peoples within its jurisdiction, in the spirit of the Universal Declaration of Human Rights, a right freely to determine their political status and to pursue their social, economic and cultural development without discrimination as to race, creed or colour.

(c) Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State.

48/ Ibid., para. 460.

49/ Ibid., Twenty-second Session, annexes, agenda item 87, document A/6799, para. 176.

(d) Every State exercising authority over a colony or other Non-Self-Governing Territory, a zone of military occupation or a Trust Territory shall, in implementation of the principle, maintain a readiness to accord self-government through their free choice, to the peoples concerned, and to make in good faith such efforts as may be required to assist them in the progressive development of institutions of free self-government, according to the particular circumstances of each Territory and its peoples and their varying stages of advancement; and, in the case of Trust Territories, shall conform to the requirements of Chapter XII of the Charter of the United Nations.

3. States exercising authority over colonies or other Non-Self-Governing Territories, zones of military occupation or Trust Territories shall be deemed to have implemented this principle fully with regard to the peoples of those Territories upon the restoration of self-government or, in the case of Territories which have not previously enjoyed self-government, upon its achievement, through the free choice of the peoples concerned. The achievement of self-government may take the form of emergence as a sovereign and independent State; free association with an independent State; or integration with an independent State.

4. States enjoying full sovereignty and independence, and possessed of a representative government, effectively functioning as such to all distinct peoples within their territory, shall be considered to be conducting themselves in conformity with this principle as regards those peoples.

143. Proposal submitted in 1967 by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48): 50/

1. All peoples have the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

2. In accordance with the above principle:

(a) The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations and, as such, is a violation of international law.

(b) Consequently, peoples who are deprived of their legitimate right of self-determination and complete freedom are entitled to exercise their inherent right of self-defence, by virtue of which they may receive assistance from other States.

(c) Each State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country.

50/ Ibid., para. 177.

(d) All States shall render assistance to the United Nations in carrying out its responsibilities to bring about an immediate end to colonialism and to transfer all powers to the peoples of Territories which have not yet achieved independence.

(e) Territories under colonial domination do not constitute integral parts of the Territory of States exercising colonial rule over them.

144. Amendment submitted in 1967 by Ghana (A/AC.125/L.50) to the proposal by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48): 51/

After the second paragraph on this principle, add a new paragraph as follows:

3. No State or any organ shall exercise jurisdiction over any other State or peoples except with the free and express consent of the State or peoples concerned and only to the extent to which that consent is given.

145. Proposal submitted in 1969 by Czechoslovakia, Poland, Romania and the Union of Soviet Socialist Republics (A/AC.125/L.74):

1. All peoples, large and small, have equal rights, the inalienable right to self-determination and complete freedom, the exercise of their full sovereignty and the integrity of their national territory.

2. Consequently:

(a) Each people has the right to determine freely their political status, including the right to establish an independent national State, to pursue their economic, social and cultural development and to dispose of their natural wealth and resources.

The integrity of the national territory shall be respected.

(b) All States shall strictly respect the right of peoples to self-determination and contribute to the fulfilment of this right so as to ensure the development of friendly relations and co-operation among nations.

(c) The subjection of peoples to alien subjugation, including the practices of racial discrimination, domination and exploitation, as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples.

Peoples who are under colonial domination have the right to carry on the struggle, by whatever means, including armed struggle, for their liberation from colonialism and may receive in their struggle assistance from other States.

51/ Ibid., para. 178.

(d) Territories which, contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples, are still under colonial domination, cannot be considered as integral parts of the territory of States exercising colonial rule over them. Administering Authorities are prohibited from undertaking any armed action or repressive measures against peoples under colonial rule and are bound to grant them independence without delay.

(e) All States shall co-operate with the United Nations to bring about an immediate end to colonialism and to transfer all powers to the peoples of Territories which have not yet achieved independence, without any conditions or reservations and any distinction as to race, creed or colour.

B. Debate

1. General comments

146. The principle of equal rights and self-determination of peoples was discussed by the Special Committee at its 104th, 105th, 106th and 107th meetings, on 2, 3 and 4 September 1969. The debate on the principle of equal rights and self-determination of peoples at the present session continued, as far as the substance of the principle is concerned, along the same lines as at the previous sessions of the Special Committee. A number of delegations pointed out, however, that they did not consider it appropriate to dwell at length on the different aspects of the principle since they had already explained their positions in detail during the preceding sessions of the Special Committee and especially at the 1968 session. Some delegations, referring to their statements made at previous sessions of the Special Committee, commented only on separate components of the principle, recalled the relevant parts of their statements made during the discussion of the other principles or stated their suggestions concerning the method and the order to be applied when transforming various elements into a precise formulation of the principle.

147. Several delegations explained the historical and political background of the principle as one closely bound up with the national history of most of the Member States and their struggle to attain or defend freedom and independence. It was pointed out that the principle had been accepted since the end of the nineteenth century as one of the fundamental elements of modern democracy. Most recently, the principle has been confirmed in numerous international instruments: for example, in the Charter of the United Nations (Article 1, (para. 2) and Articles 55, 73 and 76) and the International Covenants on Human Rights; and in various resolutions of the General Assembly: for example, in resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and in resolution 1702 (XVI), 1807 (XVII), 1810 (XVIII), 2105 (XX), 2131 (XX), 2160 (XXI), 2403 (XXIII), 2465 (XXIII). The confirmation of the principle can also be found in resolutions of the Security Council, such as resolution 246 (1968). In this connexion, the view was expressed that the Committee was justified in using the resolutions of the General Assembly as source material since the resolutions concerned had been supported by an overwhelming majority even if there was some difference of opinion as to whether those texts imposed obligations on Member States which had voted for their adoption. It was also pointed out that the Committee should in addition take account of the way in which relevant Articles of the Charter have been applied, both by the States and by the United Nations itself.

Annex 72

Record of discussions between Mr. Foley and the Prime Minister of Mauritius on Oil Exploration in the Chagos Archipelago at meetings held on 4 and 5 February 1970, FCO 32/724

(8)

CONFIDENTIAL

Private Secretary, Mr. Foley's Office.

Oil Exploration in the Chagos

I send herewith a Record of the discussion on Oil Exploration in the Chagos at the meetings between Mr. Foley and the Prime Minister of Mauritius on 4 and 5 February.

(E.H.M. Counsell)
East African Department
6 February, 1970.

Copied to:

Sir J. Johnston
Sir E. Peck
Mr. Tebbit
Legal Adviser
D.P.D.
P.I.O.D.
P.U.S.D.
A.M. & T.D.
Oil Department
Mr. J.M. Stewart, M.O.D. (DS11)
U.N.D.

CONFIDENTIAL

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Meeting between
Sir S. Ramgoolam, Mr. V. Ringadoo and
Dr. Teelock
and
Mr. M. Foley
4 February, 1970

Exploration for oil in the Chagos Archipelago

Mr. Foley set out very briefly the British Government's position. We had paid the Mauritius Government £3 million compensation for the Chagos Islands and had thereby acquired full sovereign rights over them, including all mineral rights in the islands and off-shore areas. We had stated at the time that we would not allow exploration for oil as long as the islands were required for defence purposes. This had been repeated in the Mauritius Legislative Assembly on 21/12/65 by Mr. Forget on behalf of the Prime Minister.

2. Sir S. Ramgoolam maintained that oil and mineral rights had, at the Lancaster House talks, been expressly reserved to the Mauritius Government. He stated further that £3 million paid by the British Government was a token payment only to seal a friendly family agreement. He had not in fact seen copies of the negotiations over the B.I.O.T. and thought they may not have been among the papers handed over at Independence. He had no knowledge of the statement in the Legislative Assembly. Mr. Foley

/said

said that in that case it was essential that he should see copies of the negotiations before the discussion went further, and undertook to have copies sent round that afternoon. Then they could meet again next morning.

3. Sir S. Ramgoolam referred to the Diego Garcia proposal of which he had been informed last summer. Mr. Foley told him that the U.S. Government were still determined to press on with the project but there had been a delay in reaching a final decision which was not now expected until the autumn. Sir S. Ramgoolam said that it would therefore be possible for the oil exploration team to finish before the Americans would be ready to move in. He said further that he could see no reason why the defence facility and oil production could not coexist in the islands. Mr. Foley pointed out that if exploration were permitted and oil were discovered there would be very strong pressure to allow exploitation even on Diego Garcia itself. It would not be possible to permit oil exploration or production in the islands as long as they are required for defence purposes.

CONFIDENTIAL

Resumed meeting between
Sir S. Ramgoolam, Mr. V. Ringadoo and
Dr. Teelock and Mr. M. Foley
5 February, 1970

Exploration for oil in the Chagos Archipelago

Sir S. Ramgoolam said that he had read the copies of the documents which had been sent to him the previous evening. He said that while he accepted the Extract from the Record of the Lancaster House Meeting, he emphatically could not accept the subsequent correspondence between the Governor and the Colonial Office. This correspondence had been conducted by the Governor without the knowledge or consent of himself or his Council of Ministers and neither he nor his Ministers were a party to it nor could accept it.

2. Mr. Foley pointed to the reply given by Mr. Forget to Mr. Duval in the Legislative Assembly on 21/12/65. Mr. Forget was replying on behalf of the Prime Minister and Finance Minister to an opposition leader and his reply must have been authorised by the Council of Ministers. In his reply Mr. Forget set out the position regarding the cession of the Chagos islands as agreed in the Lancaster House record and amplified in the subsequent correspondence. Sir S. Ramgoolam said that he had no knowledge of this reply, that it was not discussed by himself and his

/Council

Council of Ministers and he averred that it must have been prepared by the Governor and handed over to Mr. Forget for delivery in the House.

3. Sir S. Ramgoolam maintained that at the Lancaster House talks it was agreed that Mauritius should reserve rights to the minerals in the Chagos Islands and the off-shore areas. Para. 23 (viii) of the Record meant that the British Government would not oppose the grant of prospecting rights for minerals or oil, for how otherwise would the benefit from any minerals or oil discovered there revert to the Mauritians? Mr. Foley said that clause (viii) meant that the British Government would not allow to be exploited any mineral or oils in the islands but that any such minerals or oils could be exploited for the benefit of Mauritius after the islands were no longer required for defence purposes and had been returned to Mauritius. The subsequent correspondence with the Governor and Mr. Forget's reply in the Legislative Assembly made it quite clear that the British Government would not allow prospecting for oil as long as the islands were required for defence purposes and that the Mauritius Council of Ministers understood and accepted this. Sir S. Ramgoolam said that his interpretation of the Lancaster House discussions was different, but that with the copies of the documents he had been given he would, on his return to Mauritius,

/examine

examine the records of the meetings of the Council of Ministers for references to any further discussions on this point and, in particular, to any discussions on Mr. Forget's reply.

4. Sir S. Ramgoolam then said that he did not want to have a dispute with the British Government over this matter. If we would not permit the Mauritius Government to issue exploration licences in the Chagos, would not the British Government do so? The British Government could then so control the exploration that defence interests would not be threatened. Furthermore the off-shore areas in which the exploration companies were interested were not close to land. The discovery of oil in the Chagos would make an enormous difference to the Mauritius economy. He made a very strong plea that the British Government should permit such exploration and said he was currently having discussions in London with oil companies which wished to explore the Chagos area as well as Mauritian territory and off-shore areas.

5. Mr. Foley pointed out that the grant of exploration licences assumed that if oil were discovered production would be permitted. There would at least be very strong pressure to permit production. Exploration for and production of oil in the Chagos would nullify the purpose for which the British Government had acquired the islands. It was precisely to avoid any such interference that the British Government had acquired the islands in 1965. He

/fully

fully appreciated how much the Mauritian economy would benefit were oil to be discovered in the Chagos but he was very sorry that in no circumstances could the British Government agree to the grant of exploration licences until the islands were no longer required for defence purposes.

6. Mr. Ringadoo and Dr. Teelock also took part in the discussion. The latter urged that the British Government should allow exploration on the grounds that it could be so controlled that it would not interfere with defence interests and because of the great benefit to Mauritius the discovery of oil would bring. Mr. Ringadoo appeared to accept that the Mauritius Government must in 1965 have been informed of and accepted the fact that the British Government would not permit oil prospecting in the Chagos and to appreciate that oil prospecting or production could not be permitted while the islands are required for defence purposes.

East African Department
9 February, 1970.

Annex 73

Minute dated 26 February 1971 from A.I. Aust to Mr. D. Scott, "BIOT Resettlement: Negotiations with the Mauritius Government"

SECRET 1-6 Sept 67

Reference [illegible]

Mr D Scott

BIOT RESETTLEMENT: NEGOTIATIONS WITH THE MAURITIUS GOVERNMENT

1. Now that the Secretary of State has authorised the opening of negotiations with the Mauritius Government regarding resettlement of the inhabitants of the Chagos Archipelago, it may be helpful if I provided some guidance, from the legal point of view, on the line we could take with the Mauritius Government. Up till now I think undue emphasis has been placed upon the dual nationality of many of the inhabitants of Chagos. It would, in my view, be a mistake for us to be worried unduly by this factor. We should take the line that it is quite irrelevant to the question of resettlement. In order to explain this, I will set out briefly how the dual nationality situation arose and discuss the use of the term "Ilois".

Dual Nationality

2. When BIOT was created in 1965 the inhabitants of Chagos consisted of citizens of the United Kingdom and Colonies by virtue of birth in mainland Seychelles or Mauritius, or in island dependencies of those two countries. The creation of BIOT did not alter the status of the inhabitants which until the independence of Mauritius in March 1968 remained the same.

3. Section 20(1) of the Independence Constitution of Mauritius provided that citizens of the United Kingdom and Colonies born in Mauritius became citizens of Mauritius automatically on independence.

Section 111(1) defined "Mauritius" as the territories which immediately before independence day constituted the colony of Mauritius. As Chagos did not form part of the territories of Mauritius immediately before independence day, a person born in Chagos would not under Section 20(1) have become a citizen of Mauritius unless his father was born in mainland Mauritius (see Section 20(3)). However, because the then colonial government of Mauritius recognised that the inhabitants of Chagos had close ties with mainland Mauritius, they agreed to the very special provisions of Section 20(4) which provided in effect that (with the exception of persons with fathers born in Seychelles) a person born in Chagos before BIOT was created was to be regarded as having been born in Mauritius and therefore automatically entitled to Mauritian citizenship on independence.

4. Thus, except for certain citizens of the United Kingdom and Colonies connected with Seychelles, all the inhabitants of Chagos became Mauritian citizens automatically on independence. In addition they retained their citizenship of the United Kingdom and Colonies. The effect of Sections 3(1)(a) and 3 (5)(a) of the Mauritius Independence Act, 1968, is to preserve citizenship of the United Kingdom and Colonies for those inhabitants of Chagos who, or whose father or father's father, was born in Chagos. Such persons therefore became dual citizens of the United Kingdom and Colonies

and of Mauritius. The reason why it was decided not to take away such persons' citizenship of the United Kingdom and Colonies is that it would have been contrary to the principles of our nationality law to deprive persons born in a territory which is still a colony is BIOT or their UK citizenship.

Ilois

5. Our High Commissioner in Port Louis has confirmed that the term "Ilois" is used locally to denote a person from any of the Mascarene Islands, whether such persons have connections with Mauritius or Seychelles. It is clear that the term has no relevance to nationality and has only been used by us as a convenient, though thoroughly misleading, term to cover dual nationals when in fact the Ilois population is made up of citizens of the UK and Colonies, dual nationals and mono-Mauritian citizens with origins in Seychelles or Mauritius. I therefore see no advantage in using the term in any negotiations with the Mauritius Government. In fact, use of the term may be to our disadvantage in that it could be argued that the existence of the term is an indication that the inhabitants of Chagos have a close, if not closer, connection with Chagos than with mainland Mauritius.

6. Up to now we have been very careful not to refer to the dual nationals in Chagos in case the Mauritius Government used such knowledge (assuming they are unaware at the moment of the existence of such dual nationals) to their advantage at the United Nations or in negotiations with us. However, I think our fears have been exaggerated and that we should, instead of worrying about nationality,

problems, or the exact meaning of the term "Ilois", concentrate upon the undertakings given by HMG to the Mauritius Government in 1965 when BIOT was created. I see no need to mention the nationality situation unless it is raised by the other side.

The British Government's Undertakings to the Mauritius Government in 1965

7. BIOT Working Paper No. 2 sets out our undertakings to the Mauritius Government and in particular our undertakings regarding resettlement. In Annex C, is the reply of Mr Forget, on behalf of the Premier of Mauritius, to a question from Mr Duval in the Legislative Assembly on 21 December 1965. The wording of the answer was approved by the British Government. In particular Mr Duval asked whether "all the Mauritians now living in Diego (sic) will be resettled in Mauritius. The costs of repatriation will be met from the British Exchequer and all costs of rehousing them will be met by the British, and that work would be found for them by the British Government". Mr Forget replied that "The British Government has undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago".

8. One can draw two conclusions from this undertaking:

(a) that the resettlement of persons of Mauritian origin, was contemplated;

(b) that such resettlement would be in Mauritius.

9. The Mauritius Government might seek to argue that the undertaking does not cover Mauritian citizens who are also United Kingdom citizens.

Such an interpretation of the undertaking would be manifestly wrong. The wording is clear; it speaks simply of "Mauritians". In 1965 all the inhabitants of Chagos were UK citizens. There was no such thing as Mauritian citizenship until 1968 when the Mauritian connections of many of the inhabitants of Chagos was recognised by the Mauritius Government by their agreement to the provisions of Section 20(4) of the Independence Constitution (see para 3 above).

10. The Mauritius Government might also try to argue that although the undertaking places an obligation on HMG to pay the costs of resettlement, it does not place an obligation on the Mauritius Government to permit resettlement in Mauritius. This would also be a wrong interpretation. The mere fact that the British Government promised the Mauritius Government that it would meet the full cost of resettlement, carries with it the inescapable implication that, but for such a promise, the Government of Mauritius would itself have to pay for the cost of resettlement. If resettlement elsewhere than in Mauritius had been contemplated there would have been no need for the undertaking as the Mauritius Government would have had no liability for meeting the cost of resettlement of the inhabitants of a different colony unless they were resettled in Mauritius. Thus resettlement in Mauritius must have been in the contemplation of both Governments at the time the statement was made to the Legislative Assembly.

SECRET

Reference

11. Failure of the Mauritius Government to agree to the resettlement of persons of Mauritian origin in Mauritius would entitle us to treat our other undertakings (e.g. as to oil and fishing rights) as no longer binding upon us, because the undertaking on resettlement is only part of a package deal and must be viewed as such.

A.I. Aust.

26 February 1971

c.c.
Mr Watt
Mr Le Tocq
Mr Tesh
Mr Stratton
Mr Cox
Mr Knight

Annex 74

Note from R.G. Giddens, British High Commission, Port Louis, 15 July 1971

Annex V

Copy of a Note from the

British High Commission

15th July 1971

Two Proclamations were issued by Sir Bruce Greatbatch, Governor of the Seychelles and Commissioner of the BIOT, in 1969 establishing a 9 mile fisheries zone contiguous to the 3 mile territorial area of the Seychelles and BIOT respectively. Two Ordinances have now been enacted establishing the detailed regime to be observed within the fishing zones: these Ordinances came into force on 1st July 1971. I enclose a copy of each.

Included within the BIOT fishing zone are certain waters which have been fished traditionally by vessels from Mauritius. You will wish to know therefore that bearing in mind the understanding on fishing rights reached between HMG and the Mauritius Government at the time of the Lancaster House Conference in 1965, it is the intention of Sir Bruce Greatbatch to use his powers under section 4 of the BIOT Ordinance to enable Mauritian fishing boats to continue fishing in the 9 mile contiguous zone of the Chagos Archipelago.

(sd) R.G. GIDDENS

Annex 75

Third United Nations Conference on the Law of the Sea, "Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America: working paper on the settlement of law of the sea disputes", Official Records Vol. III, 27 August 1974, A/CONF.62/L.7

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/L. 7

Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America: working paper on the settlement of law of the sea disputes

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

We agree with that point, but we wholly fail to see why different or additional conservation measures for particular species should lead to diminishing coastal State resource rights in their economic zones.

Where a particular species of fish anywhere is endangered for any reason, it should be protected. If such protection requires agreement among a few nations, such agreement should be procured. If such protection requires an organization to fulfil the functions of conservation and allocation of the allowable catch on the high seas, such an organization should be created and empowered.

If there is a difference of opinion about whether conservation by an organization is required, an impartial and expert judgement can be used to settle the matter, such as that of the Food and Agriculture Organization of the United Nations. Some delegations have suggested that course, and it seems to us eminently sensible.

But we do not agree that in order to improve conservation the rights of coastal States should be discriminated against in the case of any species. The solution to actual or potential conservation problems in the case of highly migratory species of fish is not to reduce the rights of coastal States, but to strengthen the means of conservation, and of allocation of the allowable catch.

We accept fully the principles of conservation and of full utilization of all species of fish. But entirely consistent with those principles, we believe that coastal States, including Micronesia, should have the following rights:

1. A clear and exclusive preference to the extent of their harvesting capacity to harvest all fish in their economic zone;

2. Coastal States, including Micronesia, should have reasonable compensation for all fish harvested in their economic zone by foreign flag vessels; and

3. They should have these rights clearly spelled out in the Convention.

We believe that these rights of coastal States should be given effect without possibilities of delay or evasion. Some parts of the world urgently require regional conservation measures now, and others will require them in the future. But unless and until such regional protection is brought about, coastal States should have the right to issue conservation and allocation regulations for their own economic zones.

Once the rights of the coastal State are clearly defined, we believe that it will be much easier to bring about regional protection. In any regional system, furthermore, we believe that enforcement provisions should be strong enough to insure compliance both in the economic zone and on the high seas, and that these should be complemented by a system of swift, effective and compulsory dispute settlements that will be sensitive to the needs of small coastal States. We believe that a system embodying such a balance of interests of coastal and distant fishing nations is perfectly feasible.

Archipelago

Another subject of great concern to Micronesia is our status as an archipelagic, mid-ocean, island State. The Congress of Micronesia in January of 1974 formally adopted the archipelagic position for Micronesia. Since coming to this Conference we have heard the expressed concerns of many that archipelagic régimes may impose burdens on navigation, and that this aspect of such régimes is an obstacle to recognition of the régime for some of our neighbours, to whom the aspect of security of their waters and control of navigation is of vital interest. On the other hand, it may be possible to find ways to harmonize those archipelagic concerns with the concern for adequate international navigation and transit of archipelagic waters. The complexities of this subject, as of others at this Conference, require further consideration, from which solutions may be found. We therefore reserve comment on this subject for the next session of the Conference.

Pollution

Finally, we wish to express our great concern that adequate means be found to protect the seas from pollution of all kinds. While the dangers of pollution from vessels or sea-bed activity are well recognized, we are also deeply concerned about the great unsolved problem of disposing of radio-active atomic waste materials. The people of Micronesia have very special feelings about this matter. Years ago, one solution adopted was to dump such waste materials in the deep sea near our islands. It is now clear that the hazards of doing so were not adequately understood. Not only Micronesia but the whole world must be assured against similar potentially disastrous experimentation and practices in the future.

Conclusion

We very much hope that the Conference will take into account our views and situation. We depend upon the international community not to discriminate against islands or island States in this great endeavour to develop a new and equitable Law of the Sea. We hope for a speedy and successful conclusion of the Conference in 1975.

DOCUMENT A/CONF.62/L.7

Australia, Belgium, Bolivia, Colombia, El Salvador, Luxembourg, Netherlands, Singapore and United States of America: working paper on the settlement of law of the sea disputes

[*Original: English*]
[*27 August 1974*]

The representatives of a number of countries have held informal consultations on issues connected with the settlement of disputes which may arise under the law of the sea convention. This working paper, resulting from those discussions, is presented as a possible framework for further discussions at the next session of the Conference. It sets out various possible alternatives, together with notes indicating relevant precedents. The paper does not necessarily reflect the proposals of individual Governments, and does not in any way preclude any sponsoring delegation from presenting later its own proposals on the subject.

Where only one text appears under a particular heading, this does not necessarily imply that there are no other opinions concerning that question or that all delegations which have participated in the informal consultations agree on the necessity for such a provision.

1. Obligation to settle disputes under the Convention by peaceful means

Alternative A

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

Alternative B

[Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,] the Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention by peaceful means in conformity with the Charter of the United Nations.

Note: Relevant provisions of international instruments

United Nations Charter, Article 33:

"1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, para. 15:

"The parties to any dispute relating to activities in the area and its resources shall resolve such disputes by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international régime to be established."

Vienna Convention on the Law of Treaties, 1969, article 65 (3):

"If, however, [within a period of three months after a party to a treaty notifies the other parties of its claim with respect to invalidity, termination, withdrawal from or suspension of the operation of the treaty, an] objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations."

Convention on Fishing and Conservation of Living Resources of the High Seas, 1958, article 9:

"Any dispute which may arise between States under Articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations."

Treaty between Turkey and Jordan, 1947, article 4 (Hans Blix and J.H. Emerson, *The Treaty Maker's Handbook*, Oceana, Dobbs Ferry, N.Y., 1973, p. 121):

"The High Contracting Parties shall make every effort to solve the differences which may arise between them by peaceful means in conformity with the provisions of Article 33 of the Charter of the United Nations."

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

"Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

"States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

"The parties to a dispute have the duty, in the event of a failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

"States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

"International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

"Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes."

2. Settlement of disputes by means chosen by the parties

Alternative A

If any dispute arises between two or more Contracting Parties relating to the interpretation or application of this Convention, those Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, recourse to special procedures provided for by an international or regional organization, or other peaceful means of their own choice.

Alternative B

The parties to the dispute may agree to settle the dispute by any peaceful means of their own choice, including negotiation, mediation, inquiry, conciliation, arbitration, judicial settlement, or recourse to special procedures provided for by an international or regional organization.

Note: Relevant provisions of international instruments

United States draft articles for a chapter on the settlement of disputes (A/AC.138/97), article 1:

"In any dispute between the Contracting Parties relating to the interpretation or application of the present Convention, any party to the dispute may invite the other party or parties to the dispute to settle the dispute by direct negotiation, good offices, mediation, conciliation, arbitration, or through special procedures provided for by an international or regional organization."

Single Convention on Narcotic Drugs, 1961, article 48 (1):

"If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice."

Antarctic Treaty, 1959, article XI (1):

"If any dispute arises between two or more Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice."

3. Clause relating to other obligations*

Alternative A

If the parties to a dispute [agree to resort to a procedure entailing a binding decision or] have accepted, through a general, regional, or special agreement, or some other instruments, an obligation to resort to arbitration or judicial settlement, any party to the dispute shall be entitled to refer it to [such procedure or to] arbitration or judicial settlement in accordance with that agreement or instruments in place of the procedures specified in this Convention.

Alternative B

The provisions of this Convention relating to dispute settlement shall not apply to a dispute with respect to which the parties are bound by an agreement, or other instruments, obliging them to submit that dispute to another procedure entailing a binding decision.

Alternative C

Notwithstanding the provisions of any agreement or other instruments in force between them, the Contracting Parties shall, unless they otherwise agree, apply the procedures laid down in this Convention to any dispute relating to its interpretation or application.

*A special provision may be needed when parties to a dispute are subject to the jurisdiction of the International Court of Justice as well as Parties to this Convention.

Note: Relevant provisions of international instruments

United Nations Charter, Article 95:

"Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

United States draft articles, article 3:

"Notwithstanding the provisions of Article 2, if the parties to a dispute have agreed in any general, regional, or special agreement to resort to arbitration, any party to the dispute shall be entitled to refer it to arbitration in accordance with that agreement in place of the procedures specified in this chapter."

European Convention for the Peaceful Settlement of Disputes, 1957, article 28 (1):

"The provisions of this Convention shall not apply to disputes which the parties have agreed or may agree to submit to another procedure of peaceful settlement. Nevertheless, in respect of disputes falling within the scope of Article 1 [i.e., legal disputes] the High Contracting Parties shall refrain from invoking as between themselves agreements which do not provide for a procedure entailing binding decisions."

General Act for the Pacific Settlement of International Disputes, (1949) article 29 (1):

"Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions."

Treaty establishing the European Economic Community, article 219:

"Member States undertake not to submit a dispute concerning the interpretation or the carrying out of this Treaty to any method of settlement other than those provided for therein."

4. Clause relating to settlement procedures not entailing a binding decision

Alternative A

Where a Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention has submitted that dispute to a dispute settlement procedure not entailing a binding decision, the other party or parties to the dispute may at any time refer it to a dispute settlement procedure provided for by this Convention, unless the parties have agreed otherwise.

Alternative B

Notwithstanding any agreement to refer a dispute to a procedure not entailing a binding decision, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to that procedure.

Alternative C

The right to refer a dispute to the settlement procedure provided for by this Convention for obtaining a binding decision may be exercised only after the expiration of the time-limit established by the parties in an agreement to resort to a dispute settlement procedure which does not entail a binding decision, or, in the absence of such a time-limit, if, [within a period of . . . months] [within a reasonable time, taking into account all the relevant circumstances] that procedure has not been applied or has not resulted in a settlement of the dispute.

Note: Relevant provisions of international instruments

United States draft articles for a chapter on the settlement of disputes, article 2:

"Notwithstanding the provisions of Article 1, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention which is required by this Convention to be submitted to compulsory dispute settlement procedures on the application of one of the parties, may refer the dispute at any time to the Law of the Sea Tribunal (the Tribunal)."

Convention on Transit Trade of Land-Locked Countries, 1965, article 16 (1):

"Any dispute which may arise with respect to the interpretation or application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement within a period of nine months shall, at the request of either party, be settled by arbitration . . .".

Obligation to resort to a means of settlement resulting in a binding decision

Alternative A.1

Any dispute which may arise between two or more Contracting Parties regarding the interpretation or application of this Convention shall be submitted to arbitration at the request of one of the Parties to the dispute.

Alternative A.2

Any dispute between two or more Parties to this Convention concerning the interpretation or application of this Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in annex . . . to this Convention.

Note: Relevant provisions of international instruments

Belgium-Yugoslavia, Agreement on Social Security, 1954, article 41:

"All difficulties relating to the carrying out of the present Agreement shall be resolved by agreement between the competent authorities of the contracting Governments.

"In cases where it may have been impossible to arrive at a solution by this means, the disagreement is to be submitted to arbitration, in accordance with a procedure to be arranged between the Governments. The arbitral body shall settle the dispute according to the fundamental principles and in the spirit of the present Agreement."

United Kingdom-Belgium General Agreement on the Establishment of a British Military Base in Belgium, 1952, article 7:

"Disputes which may arise between the two Governments regarding the interpretation or application of the present Agreement or of any other separate agreement concluded pursuant to the present Agreement shall be submitted to arbitration at the request of either Government.

"The arbitrator shall be selected by agreement between the two Governments. If after two months from the date of the request of either Government to submit the dispute to arbitration the two Governments have not agreed on the choice of the arbitrator, he shall be chosen by the Secretary-General of the North Atlantic Treaty Organization."

International Convention for the Prevention of Pollution from Ships, 1973, article 10:

"Any dispute between two or more Parties to the Convention concerning the interpretation or application of the present Convention shall, if settlement by negotiation between the Parties involved has not been possible, and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in Protocol II to the present Convention."

European Interim Agreement on Social Security, 1953, article 11:

"1. Arrangements where necessary between the competent authorities of the Contracting Parties shall determine the methods of implementation of this Agreement.

"2. The competent authorities of the Contracting Parties concerned shall endeavour to resolve by negotiation any dispute relating to the interpretation or application of this Agreement.

"3. If any such dispute has not been resolved by negotiation within a period of three months, the dispute shall be submitted to arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting Parties concerned, or, in default of such agreement, within a further period of three months, by an arbitrator chosen at the request of any of the Contracting Parties concerned by the President of the International Court of Justice".

Alternative B.1

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Convention shall be submitted, at the request of any of the parties to the dispute, to the Law of the Sea Tribunal to be established in accordance with the annexed statute.

Alternative B.2

Notwithstanding the submission of a dispute to a procedure not entailing a binding decision, any Contracting Party which is party to a dispute relating to the interpretation or application of this Convention, which is required by this Convention to be submitted on the application of one of the parties to a dispute settlement procedure entailing a binding decision, may refer the dispute at any time to the Law of the Sea Tribunal.

Note: Relevant provisions of international instruments.

United States draft articles for a chapter on the settlement of disputes, article 2:

"Notwithstanding the provisions of Article 1, any Contracting Party which is a party to a dispute relating to the interpretation or application of this Convention which is required by this Convention to be submitted to compulsory dispute settlement procedures on the application of one of the parties, may refer the dispute at any time to the Law of the Sea Tribunal (the Tribunal)."

Alternative C.1

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to the dispute.

Alternative C.2

Any dispute arising between Contracting Parties concerning the interpretation or application of this Convention shall be referred by application of any party to the dispute to a chamber to be established in accordance with the Statute of the International Court of Justice to deal with the law of the sea disputes.

Note: Relevant provisions of international instruments

Convention on the Prevention and Punishment of the Crime of Genocide, 1948, article IX:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Convention on the Settlement of Investment Disputes between States and nationals of other States, 1965, article 64:

"Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement."

Statute of the International Court of Justice:

"*Article 26*

"1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

"2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

"3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

"*Article 27*

"A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

"*Article 28*

"The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

"*Article 29*

"With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit."

International Court of Justice, Rules of Court, 1972:

"*Article 24*

"1. The Chamber of Summary Procedure to be formed annually under Article 29 of the Statute shall be composed of five members of the Court, comprising the President and Vice-President of the Court, acting *ex officio,* and three other members elected in accordance with Article 27, paragraph 1, of these Rules. In addition, two members of the Court shall also be elected annually to act as substitutes.

"2. The election referred to in paragraph 1 of this Rule shall be held within three months after 6 February. The members of the Chamber shall enter upon their functions on election and continue to serve until the next election; they may be re-elected.

"3. If a member of the Chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senior in rank of the two substitutes.

"4. If a member of the Chamber ceases to be a member of it otherwise than by replacement under paragraph 1, his place shall be taken by the senior in rank of the two substitutes, who shall thereupon become a full member of the Chamber and be replaced as substitute by the election of another one. Should vacancies exceed the number of available substitutes, elections shall be held as soon as feasible in respect of the vacancies still existing after the substitutes have assumed full membership and in respect of the vacancies in the substitutes.

"*Article 25*

"1. When the Court decides to form one or more of the Chambers provided for in Article 26, paragraph 1, of the Statute, it shall determine the particular category of cases for which each Chamber is formed, the number of its members, the period for which they will serve, and the date at which they will enter upon their duties.

"2. The members of the Chamber shall be elected in accordance with Article 27, paragraph 1, of these Rules, from among the members of the Court having regard to any special knowledge, expertise or previous experience which any of the members of the Court may have in relation to the category of case the Chamber is being formed to deal with.

"3. The Court may decide upon the dissolution of a Chamber, but without prejudice to the duty of the Chamber concerned to finish any cases pending before it.

"*Article 26*

"1. When the Court, acting under Article 26, paragraph 2, of the Statute decides, at the request of the parties, to form a Chamber to deal with a particular case, the President shall consult the agents of the parties regarding the composition of the Chamber, and shall report to the Court accordingly.

"2. When the Court has determined, with the approval of the parties, the number of its members who are to constitute the Chamber, it will proceed to their election, in accordance with the provisions of Article 27, paragraph 1, of these Rules. The same procedure shall be followed as regards the filling of any vacancy that may occur on the Chamber.

"3. Any member of a Chamber formed under this Rule who ceases to be a member of the Court by reason of the expiry of his term of office shall continue to sit in the case, whatever the stage reached when his term of office expires.

"*Article 27*

"1. Elections to all Chambers shall take place by secret ballot. The members of the Court obtaining the largest number of votes constituting a majority of the members of the Court composing it at the time shall be declared elected. If necessary to fill vacancies, more than one ballot shall take place, such ballot being limited to the number of vacancies that remain to be filled.

"2. Subject to Article 13, paragraph 1, of these Rules, the President of the Court shall preside over any Chamber of which he is a member, and the same shall apply to the Vice-President of the Court in respect of any Chamber of which he, but not the President, is a member. Subject to the same provision, if neither the President nor the Vice-President is a member, the Chamber shall elect its own President by secret ballot and an absolute majority vote of its members.

"3. The member of the Chamber who, not being its President, is senior in rank shall act as Vice-President. The provisions of Article 10 shall be applicable, *mutatis mutandis,* in respect of all the Chambers and their presidencies.

"4. If in any particular case the President of the Chamber concerned is prevented from sitting, or from acting as President, the functions of the presidency shall be assumed by the Vice-President of the Chamber or, failing him, by the next ranking member of the Chamber in a position to act.

"5. Without prejudice to Article 26, paragraph 3, of these Rules the duty of a member of a Chamber who ceases to be a member of the Court, to finish a case already begun by him, arises only if he ceases to be a member of the Court after the date on which the Chamber convenes for the oral proceedings. When judgment has been pronounced, such a duty does not extend to sitting in future phases of the same case. If the member of the Chamber concerned is also its President, he shall continue to act as such."

Alternative D

Subject to the provisions of this Chapter, any party to a dispute relating to the interpretation or application of this Convention shall be entitled to refer such dispute at any time to [the dispute settlement procedures entailing a binding decision which are provided for in this Convention][arbitration][the tribunal established under this Convention][the International Court of Justice].

6. The relationship between general and functional approaches

Alternative A.1

When a party to a dispute objects to a decision arrived at through a specialized dispute settlement procedure* provided for in this Convention, that party may have recourse to the dispute settlement procedure entailing a binding decision provided for in this chapter on any of the following grounds:

(*a*) Lack of jurisdiction;

(*b*) Infringement of basic procedural rules;

(*c*) Misuse of powers; or

(*d*) Violation of the Convention.

Alternative A.2

Whenever this Convention provides for a specialized procedure, without allowing further recourse to the dispute settlement procedure entailing a binding decision, this chapter shall not apply.

Alternative B.1

1. Before resorting to the dispute settlement procedure entailing a binding decision provided for in this chapter, the

parties to any dispute relating to chapters . . . of this Convention [e.g., those relating to fishing, pollution, or scientific research] may agree to refer it to a special fact-finding procedure in accordance with the provisions of annex . . .

2. In any procedure entailing a binding decision under this chapter, the findings of fact made by the fact-finding machinery shall be considered conclusive [unless one of the parties presents positive proof that a gross error has been committed].

or

2. Should the findings of fact made by the fact-finding machinery be challenged by a recourse to the dispute settlement procedure provided for in this chapter, the party challenging such facts shall bear the burden of proof.

Alternative B.2

1. At the request of any party to a dispute relating to chapters . . . of this Convention [e.g., those relating to fishing, pollution or scientific research], the dispute shall be referred to a special fact-finding procedure in accordance with the provisions in annex . . .

2. If any party to the dispute considers that the fact-finding decision is not in accordance with the provisions of this Convention, it may appeal to the dispute settlement procedure provided for in this chapter.

Alternative C.1

1. The Law of the Sea Tribunal, to be established in accordance with the annexed statute shall establish special chambers to deal with disputes relating to chapters . . . of this Convention. Each chamber of the Tribunal shall be assisted in the consideration of a dispute by four technical assessors sitting with it throughout all the stages of the proceedings, but without the right to vote. These assessors shall be chosen by each chamber from the list of qualified persons prepared pursuant to the statute of the Tribunal. [Their opinion on scientific and technical questions shall be considered by the chamber as conclusive.]

2. Each chamber shall deal with the dispute in accordance with the special procedure prescribed for that chamber by the statute of the Tribunal, taking into account the special requirements of each category of cases.

Alternative C.2

1. When a dispute submitted to the Law of the Sea Tribunal involves scientific or technical questions, the Tribunal shall refer such matters to a special committee of experts chosen from the list of qualified persons prepared in accordance with the statute of the Tribunal.

2. If the dispute is not settled on the basis of the committee's opinion, either party to the dispute may request that the Tribunal proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and all other pertinent information.

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*It is envisaged that provisions relating to special procedures which may be required in such functional fields as fishing, sea-bed, marine pollution, scientific research, will be set out either in a separate part of the dispute settlement chapter or within the chapter to which they relate.

Note: Relevant provisions of international instruments

Treaty establishing the European Economic Community, article 173:

"The Court of Justice shall review the lawfulness of acts other than recommendations or opinions of the Council and the Commission. For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council or the Commission on grounds of incompetence, of errors of substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of power."

Statute of the United Nations Administrative Tribunal, article 11 (1):

"If a Member State, the Secretary-General or the person in respect of whom a judgment has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death) objects to the judgment on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgment, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter."

Agreement for the Establishment of the Indo-Pacific Fisheries Council, 1961, article XIII, and Agreement for the Establishment of the General Fisheries Council for the Mediterranean, 1963, article XIII:

"Any dispute regarding the interpretation or application of this Agreement, if not settled by the Council, shall be referred to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee. The recommendations of such a committee, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If , as a result of this procedure, the dispute is not settled, it shall be referred to the International Court of Justice in accordance with the Statute of the Court, unless the parties to the dispute agree to another method of settlement."

Australia and New Zealand, draft articles on Highly Migratory Species, A/CONF.62/C.2/L.57/Rev.1):

"In disputes involving scientific and technical matters the Disputes Tribunal shall request the opinion of experts from FAO and from any other appropriate source."

International Olive Oil Agreement, 1963, article 35:

"1. Any dispute, other than [those relating to appellations of origin and indications of source], concerning the interpretation or implementation of this Agreement, which has not been settled by negotiation shall, at the request of a participating Government which is a party to the dispute, be referred to the Council for decision after consulting, if necessary, an advisory commission, the composition of which shall be fixed by the Council's rules of procedure.

2. The advisory commission's opinion, with reasons stated, shall be submitted to the Council which shall settle the dispute after due consideration of all pertinent information."

7. PARTIES TO A DISPUTE

Alternative A

1. The dispute settlement machinery shall be open to the States parties to this Convention.

2. The conditions under which the machinery shall be open to other States, international intergovernmental organizations, [non-governmental international organizations having a consultative relationship with the United Nations or a specialized agency of the United Nations or any other international organization], and natural and juridical persons shall be laid down [by . . .] [in an annex to this Convention], but in no case shall such conditions place the parties in position of inequality.

Alternative B

The dispute settlement machinery shall be open to the States parties to this Convention [and to the Authority, subject to the provisions of article . . .].

Note: Relevant provisions of international instruments

Statute of the International Court of Justice:

"*Article 34*

"1. Only States may be parties in cases before the Court.

"2. The Court, subject to and in conformity with its Rules may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

"3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

"*Article 35*

"1. The Court shall be open to the States parties to the present Statute.

"2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

"3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court."

Treaty establishing the European Economic Community, article 173:

"The Court of Justice shall review the lawfulness of acts other than recommendations or opinions of the Council and the Commission. For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council or the Commission on grounds of incompetence, of errors of substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of power.

"Any natural or legal person may, subject to the same conditions, have recourse against a decision directed to him or it or against a decision which, although in the form of a regulation or a decision directed to another person, is of direct and individual concern to him or to it."

8. LOCAL REMEDIES

Alternative A

A Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to a request for submission of dispute to the dispute settlement procedure under this chapter solely on the ground that any remedies under its domestic law have not been exhausted.

Alternative B.1

The Contracting Parties shall not be entitled to submit a dispute to the dispute settlement procedure under this chapter, if local remedies have not been previously exhausted, as required by international law.

Alternative B.2

1. In the case of a dispute relating to the exercise by the coastal State of its enforcement jurisdiction in accordance with this Convention, the occasion [subject matter] of which, according to the domestic law of the coastal State, falls within the competence of its judicial or administrative authorities, the coastal State shall be entitled to request that the submission of the dispute to the means of dispute settlement provided for in this chapter be delayed until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party to the dispute which desires to resort to the procedure for dispute settlement provided for in this chapter may not submit the dispute to such procedure after the expiration of a period of one year from the date of the aforementioned decision.

[3. When the case has been submitted to the settlement procedure under this chapter, the party challenging the findings of fact by the judicial authorities of the coastal States shall bear the burden of proof.]

Note: Relevant provisions of other agreements

Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, article VIII (2):

"The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own court have not been exhausted."

Geneva General Act for the Pacific Settlement of Disputes of 1928 and Revised General Act of 1949, articles 31 and 32:

"*Article 31*

"1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present General Act until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

"2. In such a case, the party which desires to resort to the procedures laid down in the present General Act must notify the other party of its intention within a period of one year from the date of the aforementioned decision.

"*Article 32*

"If, in a juridical sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial sentence or arbitral award shall grant the injured party equitable satisfaction."

9. ADVISORY JURISDICTION

If a court of a Contracting Party has been authorized by the domestic law of that Party to request the Law of the Sea Tribunal to give an advisory opinion [a ruling] on any question relating to the interpretation or application of this Convention, the Law of the Sea Tribunal may [shall] give such an opinion [ruling].

Note: Relevant provisions of international instruments

Treaty establishing the European Economic Community, article 177:

"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

"(*a*) The interpretation of this Treaty;

"(*b*) The validity and interpretation of measures taken by the institutions of the Community;

"(*c*) The interpretation of the statutes of bodies set up by a formal measure of the Council, where those statutes so provide.

"Where such a question is raised before any court or tribunal of one of the Member States, that Court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

"Where such a question is raised in a case pending before a court or tribunal of a Member State, from whose decisions there is no possibility of appeal under internal law, that court or tribunal shall be bound to bring the matter before the Court of Justice."

10. Law applicable

Alternative A

In any dispute submitted to it the dispute settlement machinery shall apply the law of this Convention, and shall ensure that this law is observed in the interpretation and application of this Convention.

Alternative B

In any dispute submitted to it, the dispute settlement machinery shall apply, in the first place, the law of this Convention. If, however, the dispute relates to the interpretation or application of a regional arrangement or public or private agreement concluded pursuant to this Convention, or to regulations adopted by a competent international organization, the dispute settlement machinery shall apply, in addition to the Convention, the rules contained in such arrangements, agreements, or regulations, provided the regulations are not inconsistent with this Convention.

Alternative C

Any dispute submitted to the dispute settlement procedure established by this Convention shall be decided in accordance with applicable international law.

Alternative D

In any dispute submitted to it, the dispute settlement machinery shall apply:

(*a*) The provisions of this Convention;

(*b*) The rules and regulations laid down by the competent international authority;

(*c*) The terms and conditions of the relevant contracts or other legal arrangements entered into by the competent international authority.

10A. Equity jurisdiction

The provisions of this chapter shall not prejudice the right of the parties to a dispute to agree that the dispute be settled *ex aequo et bono.*

Note: Relevant provisions of international instruments

Statute of the International Court of Justice, Article 38:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

"(*a*) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

"(*b*) International custom, as evidence of a general practice accepted as law;

"(*c*) The general principles of law recognized by civilized nations;

"(*d*) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono,* if the parties agree thereto."

Treaty Establishing the European Economic Community, article 164:

"The Court of Justice shall ensure that the law is observed in the interpretation and implementation of this Treaty."

11. Exceptions and reservations to the dispute settlement provisions

Alternative A

The provisions of this chapter shall apply to all disputes relating to the interpretation and application of this Convention.

Alternative B.1

The dispute settlement machinery shall have no jurisdiction to render binding decisions with respect to the following categories of disputes:

(*a*) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged;*

(*b*) Disputes concerning sea boundary delimitations between States;

(*c*) Disputes involving historic bays or limits of territorial sea;

(*d*) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;

(*e*) Disputes concerning military activities [, unless the State conducting such activities gives its express consent].

(*f*) . . .

(*g*) . . .

Alternative B.2

The dispute settlement machinery shall have no jurisdiction with respect to the following categories of disputes:

(*a*) Disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power;*

(*b*) Disputes concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea;

(*c*) Disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies under international law;

(*d*) Disputes concerning military activities [, unless the State conducting such activities gives its express consent.]

(*e*) . . .;

(*f*) . . . .

Alternative C.1

1. In ratifying this Convention, acceding to it, or accepting it, a State may declare that it does not accept the jurisdiction of the dispute settlement machinery to render binding decisions with respect to one or more of the following categories of disputes:

(*a*) Disputes arising out of the normal exercise of regulatory or enforcement jurisdiction, except when gross or persistent violation of this Convention or abuse of power is alleged;*

Annex 76

Third United Nations Conference on the Law of the Sea, Summary Records of the 57th-65th Plenary Sessions, Official Records Vol. V, UN Docs. A/Conf.62/SR.57-65

Third United Nations Conference on the Law of the Sea

1973-1982
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A/CONF.62/SR.57

57th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

PLENARY MEETINGS

57th meeting

Monday, 15 March 1976, at 3.35 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Opening of the fourth session

1. The PRESIDENT declared open the fourth session of the Third United Nations Conference on the Law of the Sea.

Minute of silence for prayer or meditation

On the proposal of the President, the representatives observed a minute of silence.

Adoption of the agenda (A/CONF.62/45/Rev.1)

The agenda was adopted.

Statement by the Secretary-General

2. The SECRETARY-GENERAL welcomed the representatives and said there was every reason to believe that the fourth session would prove to be of decisive importance for the successful outcome of the Conference.

3. The decision taken at the third session to prepare a single negotiating text was symbolic of the trust and confidence which the Conference had placed in its President and its Bureau. That decision was also significant for its commitment to proceed as expeditiously as possible towards the general agreement which was necessary for a single, comprehensive convention. Each participating State was to be congratulated on its strict adherence to the mandate laid down by the General Assembly in order to achieve a single convention encompassing the many complex and interrelated issues involved in the law of the sea. In that process, the Conference had adopted the most appropriate rules of procedure to expedite that task and had made a strong commitment to establish a convention aimed at securing the widest possible acceptance.

4. In pursuit of those goals, the participants in the Conference had been both skilful and innovative in their working methods. The preference for informal methods of work was now well understood and appreciated to such an extent that the negotiated decision, where a wide range of interrelated issues was involved, might become the preferred method for dealing with many other global problems which faced the international community. As the need arose, he was sure that the Conference would find ways of advancing its work, and the experience gained in the process would be of great interest and of potential value for other international undertakings.

5. He believed it was important to emphasize that the law of the sea had steadily evolved during the Conference and the sessions of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, which had preceded it. Progress towards a new comprehensive body of law for the seas was also apparent in the records of the Conference. It was reflected in the agreement on the machinery for decision-making as embodied in the rules of procedure, in the emergence of certain dominant trends among the issues and in the Geneva decision to provide a single negotiating text. That text would be the essential working mechanism to enable the Conference to organize the next and most crucial stage of the process of negotiation.

6. Everyone appreciated the fact that much was at stake. A wide measure of international agreement on a profoundly complex issue which involved all nations could have a most significant impact on international co-operation and agreement in other areas. The hard realities of the formidable increase in the world's population over the next 25 years made it necessary to find, and to manage efficiently and equitably, the immense resources of the sea. General agreement was near in certain key areas, such as the limits of the territorial sea and the economic zone, while, at the same time, it was recognized that problems still faced those countries which did not benefit from the extension of national jurisdiction. The issue of passage through straits must also be resolved. The establishment of a sea-bed authority presented perhaps the most difficult, but the most important, issue of all. Lastly, a satisfactory solution must be found to ensure the optimum utilization and protection of fish stocks, and the very important problem of the conduct of scientific research must be resolved.

7. The sense of urgency to reach agreement on those difficult issues which was shared by all, and which had so clearly affected the work of the Conference, had alerted the world to the potential for dispute and confrontation that would lie in a failure to find acceptable solutions to the issues before the Conference. A unique opportunity that might not recur would have been lost if the uses made of the sea were not subjected to orderly development for the benefit of all and if the law of the sea did not succeed in contributing to a more equitable global economic system. There was a broad and growing public understanding and appreciation of the issues involved, and the successful outcome of the work of the Conference would also have a major impact on the establishment and implementation of the new international economic order.

8. The sea was a vital and living organism, and its law must reflect discernible patterns of progressive development. It was to that end that, in 1970, the General Assembly had drawn up the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Juristiction[1] and called for the convening of a Third United Nations Conference on the Law of the Sea.

9. He firmly believed that a just, viable and durable agreement on the issues concerning the law of the sea was of the greatest importance in preserving peace for future generations. The ability of the international community to achieve workable solutions to global problems would be tested through the work of the Conference.

[1] Resolution 2749 (XXV).

10. Success would only be achieved if all nations recognized that it was in the long-term interests of each one that the Conference should succeed in establishing a law of the sea that would be respected by all. That would mark a decisive advance in the task of reaching global solutions to the immense world problems confronting all humanity. In the process of negotiation, accommodation, compromise and agreement lay one of the greatest challenges and hopes of the current time. He knew that the participants recognized the scale of that challenge, and he was confident that they would meet it, for it was not only the law of the sea that was at stake; the whole structure of international co-operation would be affected, for good or for ill, by the success or failure of the Conference.

Statement by the President of the Conference

11. The PRESIDENT welcomed all representatives and said that the fourth session of the Conference would be the most crucial one so far, because it was the first time that there had been a sound basis for negotiations. He thanked the Chairmen of the Main Committees for the diligence with which they had prepared the informal single negotiating texts. Representatives must now negotiate seriously, because of the responsibilities which they had both to their Governments and to the international community. No one delegation would be able to obtain all that it desired, but there would be a measure of achievement for all; in other words, compromise would be the key word of the session.

Organization of work and membership of subsidiary organs

12. The PRESIDENT announced that Mr. Galindo Pohl (El Salvador) had resigned as Chairman of the Second Committee and that the Latin American States had nominated Mr. Aguilar (Venezuela) to succeed him. If there was no objection, he would take it that Mr. Aguilar was elected Chairman of the Second Committee.

Mr. Aguilar (Venezuela) was elected Chairman of the Second Committee by acclamation.

13. Mr. GALINDO POHL (El Salvador) paid tribute to the new Chairman of the Second Committee for his outstanding work in the Conference and said that his delegation was gratified to see him elected.

14. Mr. AGUILAR (Venezuela) paid a tribute to the outgoing Chairman of the Second Committee. He thanked the Conference for electing him and said he regarded his election as an honour for his country, which was convinced of the importance of the Conference.

15. The PRESIDENT welcomed the delegations of Cape Verde, the Comoros, Mozambique, Papua New Guinea, Sao Tome and Principe and Surinam, countries which were participating for the first time as full members of the Conference.

16. He announced that the Group of Western European and Other States had decided that Belgium would replace Ireland as a Vice-President of the Conference during the present session. Secondly, the representative of El Salvador having been replaced by the representative of Venezuela as Chairman of the Second Committee, El Salvador would replace Venezuela as a member of the Drafting Committee. Finally, the General Committee had been informed by the representative of the United Kingdom, at its 14th meeting, that the United Kingdom would grant independence to the Seychelles on 28 June 1976; in accordance with past practice, he suggested that the Seychelles should be invited to attend the fourth session as an observer, without the right to vote, until it qualified for full membership in the Conference.

It was so decided.

17. The PRESIDENT said he had informed the General Committee, at its 14th meeting, that he had held discussions with the Chairmen of the Main Committees, the Chairman of the Drafting Committee, the Rapporteur-General and the Special Representative of the Secretary-General regarding the organization of work for the session. It had previously been decided that there would be no further general statements except on one or two items, which he would mention later. It had also been agreed that there would be no general discussion on the informal single negotiating texts. Accordingly, he suggested that the Chairmen of the Main Committees should proceed immediately to initiate negotiations. The negotiating texts could be discussed article by article, by groups of articles, or by concentrating on the key issues, in which case it would be left to the Committees themselves to decide what those issues were and to reach some measure of agreement on them. The precise procedure would depend on the nature of each Committee's mandate.

18. It had been suggested that, during the negotiations, any objections to or proposals regarding the texts should be submitted as informal amendments, since the texts themselves were informal. Amendments need not be in legal terms or treaty language, but they should be sufficiently clear and unambiguous to be put into proper treaty language at the appropriate stage.

19. It had been further suggested that only amendments of form should be submitted, and not drafts which would have the effect of changing the texts so substantially that they would lead to a proliferation of alternative texts. He did not believe that that suggestion was practical, because at the 55th meeting on 18 Apri 1975 it had been agreed that the single negotiating text *(a)* should take into account the formal and informal discussions previously held; *(b)* should be informal in character; *(c)* would not prejudice the position of any delegation; *(d)* would not represent any negotiated text or accepted compromise; *(e)* was a procedural device and was to serve only as a basis for informal negotiations; *(f)* would not affect the status of proposals already made by delegations; *(g)* would not affect the right of any delegation to submit amendments or new proposals.

20. He intended to confer regularly, at least once a week, with the Chairmen of the Main Committees, the Chairman of the Drafting Committee, the Rapporteur-General and the Special Representative of the Secretary-General to ensure, as far as possible, that even progress was being made in all three Main Committees. Informal plenary meetings would therefore be needed in order to ensure the proper co-ordination of the negotiations, and he suggested that the informal procedure and informal status of the texts should be maintained for a certain period in order to promote proper negotiations. That period should not be too short, lest the impression were created that undue pressure was being exerted on members, nor should it be so long as to give rise to complacency regarding the time available for agreement. What was needed was a judicious compromise. If the Chairman of a Committee found that there was a set of amendments commanding such widespread support as to justify the revision of the negotiating text, then he should be free to revise that portion of the text while retaining its informal nature. That would be entirely within the discretion of the Chairman concerned, who would act in accordance with the wishes of his Committee.

21. Each Chairman should obtain his Committee's agreement on the allocation of time for stating objections or proposing informal amendments. In that process, lengthy statements would not be necessary and the Chairman would decide how the informal negotiations should be conducted. That should be done with the full knowledge of each member of the Committee.

22. Concern had been expressed in the General Committee about small group meetings or "family gatherings". He therefore suggested that the results of such meetings should be conveyed to the Chairman of each Committee, who would then inform his Committee on decisions reached. The Chairmen could also decide, together with the members of their Committees, when a given Committee should hold formal meetings in order to obtain summary records.

23. At the proper stage, there would be a need to consider giving the informal single negotiating text a formal status. Perhaps a period of, say, four weeks should elapse before the Chairmen decided on revising their single negotiating texts on the basis of amendments which commanded a wide measure of support.

24. Formal meetings should, as far as possible, be avoided; however, it would be left to the Chairmen, in consultations with their Committees, to decide when formal meetings would be held. He suggested that, when it was decided to formalize the negotiating texts, the President should prepare a single document following consultations with the Chairmen of the Main Committees. That would not, however, preclude the Chairmen from conducting informal negotiations on the part of the document that was of concern to each Committee.

25. At the 14th meeting of the General Committee, the Chairman of the Drafting Committee had put forward his ideas on the role and function of that body and had said that he was at the disposal of the Chairman of any Main Committee.

26. It had been stated that limited group meetings had, to some extent, impeded the work of the Main Committees. He believed that that type of "inbreeding" could be harmful, since all delegations should be involved in the negotiations. He therefore suggested that no group meeting should interfere with the proceedings of the Conference itself, i.e., plenary meetings and meetings of the Main Committees.

27. The Special Representative of the Secretary-General should be kept informed of group meetings to be convened in consultation with the President or Committee Chairmen, so that the necessary facilities could be provided. The Special Representative would also organize daily briefings within the Secretariat on the work of all Committees and the progress of work in all Committees would be conveyed by the relevant Committee Secretaries to the President and the Chairmen of Committees.

28. He then drew attention to document A/CONF.62/WP.9, on the settlement of disputes, which he had prepared as an additional single negotiating text. Provision for the settlement of disputes had been made in the text prepared by the Chairman of the First Committee, but not in those prepared by the Chairmen of the Second and Third Committees. He believed that the text which he had prepared would facilitate the work of the Conference and, since no general discussion had been held on it, he would set aside a few days for a general debate on the matter.

29. He appealed to members of the Conference to avoid protracted debates on matters of procedure so that the international community could, at the end of the session, see at least a glimmer of hope for a treaty on the law of the sea.

30. Mr. PEACOCK (Australia) said that the preparation of a single negotiating text as a basis for discussion had provided an essential impetus to the work of the Conference. However, it was no use pretending that the single negotiating text required nothing more than polishing and punctuation to make it generally acceptable, since some proposals concealed major divisions of opinion which must be overcome before an agreement could be reached.

31. There were some who had thought that it was not necessary to replace the Geneva Conventions of 1958, and some who had doubted whether any single treaty could resolve existing conflicts. Others had suggested that law of the sea problems should be settled on a bilateral or regional basis, or by the development of new customary international law. However, his Government thought it essential to conclude a convention in order to balance disadvantages with advantages; while the need for many States to reach further agreement on details not covered by a convention should not be excluded, the convention should provide the essential framework for the conclusion of any subsequent related arrangements. Every country had an interest in the orderly regulation of the use of oceans, and the re-establishment of an acceptable measure of stability would benefit the vast majority of States.

32. Discussions which had taken place in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and in previous sessions of the Conference had raised the expectations of Governments, and such expectations should not be disappointed. With reference to the area of the sea-bed beyond national jurisdiction, the 1970 Declaration of Principles had added considerable weight to the concept that the sea-bed beyond national jurisdiction and its resources were the common heritage of mankind. His Government had supported that concept, and as a result of the intersessional consultations it saw hope for the acceptance of a system of assured access to the sea-bed areas for individual States and their nationals, as well as for the sea-bed authority itself; such a system would ensure the full development of sea-bed resources. Furthermore, it was to be hoped that divergent views on the structure of the sea-bed authority would be reconciled by a system which ensured a satisfactory representation of interests. The interests of States which were significant producers of the same minerals as would be produced from the sea-bed must be protected.

33. In the Second Committee, his country welcomed the growing acceptance of the concept of the economic zone. There were still, however, a number of important aspects in which it remained necessary to reconcile the interests of coastal States, of distant water fishing States, of land-locked States and of economically less developed States. The rights of the coastal States to living and non-living resources, including the right to exploit and control the fisheries resources of the economic zone, must coexist with rights of navigation and overflight. Many countries, including Australia, emphasized the importance of ensuring freedom of movement for ships and aircraft, not only on and over the high seas but also within and over straits, archipelagic waters and exclusive economic zones. However, his country also hoped that the convention would confirm the acquired rights of those coastal States which possessed appurtenant continental shelves.

34. In the Third Committee, progress had been made in implementing the commitment of the world community to the causes of environmental protection, scientific research and the transfer of technology. His country felt a particular responsibility for the protection of the environment of the waters surrounding the Australian continent and regarded achievement of agreement in that field as an essential part of the Conference.

35. A spirit of understanding and accommodation was vital to the work of each Committee. To be effective, a convention must be widely ratified and must go beyond merely formal compromise. Australia was heavily dependent upon the oceans with interests in many matters including freedom of navigation, development of sea-bed resources, access to fisheries and the protection of its coast-line, including the unique Great Barrier Reef, and was therefore strongly motivated towards the conclusion of a suitable convention. While Governments acting to protect their vital interests

were not to be criticized, it would be regrettable if the elaboration of a comprehensive law of the sea was jeopardized by premature unilateral action. His country would make every effort to promote solutions which safeguarded the widest possible range of interests.

36. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said that it was vital for all members of the Committee to be consulted at every stage of the proceedings and for representatives to be available at all times. While the participation of all delegations in informal consultations was difficult to attain, no major decision would be taken without the consent of all members of the Committee. He would be available for consultation at all times.

37. Mr. AGUILAR (Venezuela), speaking as Chairman of the Second Committee, said that the guidelines suggested by the President were excellent and, if followed, would ensure positive results. The use of informal consultations open to all members of the Committee would guarantee progress.

38. Mr. YANKOV (Bulgaria), speaking as Chairman of the Third Committee, said that all efforts should be directed towards achieving a compromise solution based on a comprehensive approach. The guidelines suggested by the President should provide the basic framework for negotiations, and it was to be hoped that the President would co-ordinate the work of the Committees by establishing a common time-table. Negotiations should proceed on an informal basis. The informal single negotiating text should be discussed article by article, but the Committee's approach should be flexible in order to ensure that key substantive issues would not be overlooked. Since a general debate on the main issues had already taken place, it was now time to concentrate on the drafting of a universal convention.

39. Mr. BEESLEY (Canada), speaking as Chairman of the Drafting Committee, said that, whenever necessary, the Committee would meet informally to consider drafting points submitted to it. In accordance with its mandate, the Committee was limited to the discussion of legal and technical questions, such as the standardization of terminology and internal contradictions in the convention. However, while willing to discuss points submitted to it, the Drafting Committee did not wish to anticipate decisions to be taken at plenary meetings. By meeting informally, the Drafting Committee also hoped to deal with the heavy workload in the most efficient manner possible.

40. Mr. RATTRAY (Jamaica), Rapporteur-General, agreed that all delegations must be involved in the negotiations and consultations on matters of substance. The President was right in saying that there was no need for a general debate on the single negotiating texts. He also endorsed the President's other proposals for informal consultations and submission of informal amendments, the setting of a four-week deadline, the involvement of the Drafting Committee and the need for co-ordination, all of which were designed to provide the necessary forward thrust. Finally, he expressed the hope that delegates would demonstrate a rare sense of involvement, so that substantial progress might be achieved at the current session.

41. Mr. LAI Ya-li (China) said that the informal single negotiating text was a procedural device and was therefore simply a working instrument without binding force. Thus, amendments could be made and new proposals discussed together with the texts. Moreover, since the texts had been put forward at the end of the preceding session and had not been discussed, each delegation should be given an opportunity to make general and specific comments at the present session. Secondly, he pointed out that all delegations must engage in discussions and consultations on an equal footing, since all of them represented sovereign States and matters of substance concerning the law of the sea would have a direct bearing on each country. As some delegations, particularly those of developing countries, were relatively small, care should be taken to ensure that not too many subsidiary organs met at the same time. The Conference should focus first on major questions of principle, progress on which would contribute to the solution of the other questions. He stressed the importance which the third world attached to the establishment of a law of the sea régime; that would be a difficult task, and unity among the developing countries was essential if progress was to be made. His delegation would adhere to its position and work for positive results.

42. Mr. MAZILU (Romania) said that his delegation agreed with the proposals made by the President regarding the role of the various organs of the Conference. It would only emphasize that those organs should be open to the participation of all interested States, since, in order to be democratic, the new convention must reflect the contributions of all States.

43. Mr. BÁKULA (Peru) said that special emphasis should be placed on the need for all States to participate in the negotiations. It was his understanding that the President's discussions with the Chairmen of the Main Committees would not be a substitute for meetings of the General Committee, which, according to the rules of procedure, must assist the President in ensuring the co-ordination and progress of the work.

44. He wished to mention, in passing, that his delegation would have some reservations both of substance and of form concerning the single text on the settlement of disputes.

45. He asked the President to provide the opportunity in the Plenary for a debate on the question of the peaceful uses of ocean space.

46. Mr. ZEGERS (Chile) supported the President's proposals concerning the organization of work. Although the work of the Committees would have priority over that of informal groups, there was nothing to prevent such groups from helping the Committees and the plenary Conference, and he drew attention in that connexion to the valuable assistance provided by the Group of Legal Experts. With regard to co-ordination, he said that consultations between the Chairmen of the Committees were no substitute for meetings of the General Committee, which he proposed should meet regularly, perhaps weekly, to consider the co-ordination of work.

47. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that, while he agreed with the President on the importance of the three single texts, they were not final, because each country had maintained its position. Accordingly, amendments of substance in addition to those of form would be required in many cases, and delegations had the right to reiterate and maintain proposals previously submitted or to make new ones, as was pointed out in document A/CONF.62/WP.8.[2] That was particularly true with regard to the text regarding settlement of disputes submitted by the President. On that question, the plenary should prepare a single text which was the product of negotiations. Perhaps alternative wordings could be included in some chapters of the single texts, as that would be the only way for some delegations to give their views.

48. Although it was divided into separate sessions there was only one Conference, and participants could not ignore

[2] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

what had been done at the earlier sessions. In many cases, the positions put forward at those sessions had not been withdrawn; that was very true of Ecuador's position regarding the 200-mile territorial sea.

49. All participating delegations must be consulted on all aspects of the work if practical results were to be achieved. Only thus could mutual concessions be ensured. However, he pointed out that some countries considered certain aspects so vital that they could not make concessions, and unless proper consideration was given to those aspects progress would be impossible.

50. Finally, he supported the President's proposals regarding the method of work and expressed the hope that, in cases where it was clear that the work of the Conference would benefit from meetings of small groups, the Secretariat would provide the necessary facilities, preferably at times which would not clash with meetings of the Main Committees.

51. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation supported the President's proposals and reiterated that the work must be resumed at the point at which it had been left off in Geneva. The single texts prepared by the Chairmen and the President were an excellent basis for preparing the convention. He recalled the point made in the General Committee regarding the broad understanding on the desirability of strengthening the results achieved at Geneva and, on that basis, seeking to reach agreement by consensus on a package deal regarding utilization of the oceans. His delegation supported the suggestion that amendments might be presented to the unofficial texts during informal meetings and that the Chairmen of the Committees could determine which amendments had broad support and should be taken into account. His delegation agreed that it would not be advisable to try to predetermine which texts and amendments would be given official status. Individual texts would become official only when they formed part of a single draft convention. Furthermore, his delegation agreed that the decisions of the Conference would have great political impact and would affect peace in future years. The Conference should reach decisions on all fundamental issues so as to preclude any possibility of dispute concerning the utilization of the world's oceans.

52. Mr. BAROODY (Saudi Arabia) observed that, if whatever convention was arrived at was not acceptable to China, the Soviet Union or the United States of America, the work would have been in vain. Accordingly, it was incumbent on the President to ensure that those three major Powers agreed on major issues; otherwise, the entire Conference would be a waste of time and money. If it was not possible to reach agreement on a single convention, the Conference should elaborate several conventions on different aspects of the law of the sea, in the hope that one day nations would come to realize they were all one family and that a single convention could then be achieved.

53. Mr. ABDEL MEGUID (Egypt) said that all Committee members should participate in consultations in order to ensure the acceptance and general application of the convention. Initially, particular attention should be paid to controversial issues; if agreement was reached on them, other issues could then be discussed. The method of work which had been suggested for the Third Committee by its Chairman was excellent and should be considered by the other Committees. A weekly plenary meeting, aimed at co-ordinating the work of the Main Committees, was desirable.

54. Mr. JAIPAL (India) said that the guidelines suggested by the President were reasonable, but a flexible approach was necessary in view of the differences of opinion which existed on important issues. Undue haste in the discussion of amendments might jeopardize the universality of the convention.

55. Because of his country's huge population, all resources within its jurisdiction were vital for its development. India recognized its responsibility not only to its own people but also to the international community, and would contribute actively to the negotiations. The informal single negotiating text provided a good basis for further negotiation, provided that no pre-conditions were implied.

56. Mr. WITEK (Poland) supported the procedural arrangements suggested by the President. A flexible approach was necessary and, while substantial changes to the informal single negotiating text should be avoided, quite significant changes should be admitted in paragraphs which lacked universal support, especially those connected with the question of land-locked and geographically disadvantaged States. The negotiating procedures must be clearly established from the beginning.

57. Mr. TREDINNICK (Bolivia) expressed the hope that coastal States would take full account of the needs of land-locked and geographically disadvantaged States. He supported the procedural proposals made by the President.

58. Mr. ZULETA (Special Representative of the Secretary-General) said that the Secretariat would consult with the President and the Committee Chairmen to ensure that informal meetings did not interfere with the work of the Main Committees. Since the Secretariat could not service every informal meeting, it was for the President and the Chairmen to decide on priorities.

Additions to the list of non-governmental organizations

59. Mr. HALL (Executive Secretary of the Conference) said that, in accordance with rule 66 of the rules of procedure, the following non-governmental organizations had asked to participate in the Conference: Pax Christi, International Catholic Peace Movement; the Population Institute and the World Alliance of Reformed Churches.

60. The PRESIDENT said that, if there was no objection, he would take it that the Conference approved the inclusion of those organizations in the list of non-governmental organizations.

It was so decided.

The meeting rose at 6.15 p.m.

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.58

58th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

58th meeting

Monday, 5 April 1976, at 11.05 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Composition of the Drafting Committee

1. The PRESIDENT said that if he heard no objection he would take it that members agreed that Austria would replace the Netherlands on the Drafting Committee.

It was so decided.

Settlement of disputes (A/CONF.62/WP.8,[1]/WP.9 and Add.1)

2. The PRESIDENT drew attention to document A/CONF.62/WP.9/Add.1, which contained two errors: one in the last line of paragraph 31, where the word "justifiable" in the English version should read "justiciable"; the other in foot-note 7, where "Austria" should be replaced by "Australia". He also pointed out that foot-note 27, which referred to the proposal by Canada and a number of other States, made it clear that the document in question referred only to fisheries and fisheries jurisdiction. Finally, he urged members to avoid a procedural discussion on the status of the documents in question and to try to keep their statements brief.

3. Mr. GALINDO POHL (El Salvador), commenting in a preliminary manner on document A/CONF.62/WP.9, stressed the need for any future convention to include a chapter on the settlement of disputes. Concerning the impact of *lex ferenda* on the settlement of disputes, he said that when new norms of international law were created they should be accompanied by clearly defined means of ensuring that they were implemented. When it was a question of codification, one could rely on the lax means of settlement of disputes now available, which were based on three principles: the compulsoriness of peaceful settlements, free choice of means by States, the will of States as the sole source of the jurisdiction of international tribunals. The recent experience of international conferences was not very edifying so far as the settlement of disputes was concerned, for little progress had been made since the days of the League of Nations. When norms which reflected precarious balances of opposing interests were involved, provision for their effective implementation was essential to their acceptance.

4. Generally speaking, his delegation would like to see in the draft a greater reflection of the maritime zones adopted in other chapters of the single negotiating text. The use and exploitation of the sea waters and the subsoil thereof could require special treatment because of the marine environment. He pointed out that to accept the substantive norms in the absence of effective implementation procedures would most likely contribute to perpetuating differences between States with all the tensions that would entail. It might be expected that agreement could be reached, in principle at least, on a common frame of reference, which was a prerequisite for a meaningful dialogue and negotiation. Ensuring that the convention included a system for the settlement of disputes would make it possible to avoid the following difficulties: uncertainty concerning correct understanding of the agreed norms, which could arise even when States acted in good faith; disputes deriving from different interpretations of the rules; unilateral extension of concessions reflected in the rules, which would upset the original political balance; evasion of the objective of the convention, which was to ensure peaceful activities in the ocean spaces; and the period needed to consolidate the new rules, which would undoubtedly be fraught with legitimate doubts.

5. The main question in the settlement of disputes continued to revolve around the international tribunal. Perhaps, as far as the law of the sea was concerned, the time had come to develop Article 33 of the Charter of the United Nations through the prior selection of specific relevant and precise means for settling disputes. It was to be hoped that specific means would be adopted by the current Conference and that compulsory jurisdiction would be established for certain matters. Experience had shown that the type and composition of the tribunal must form part and parcel of the acceptance in principle of the idea of such a tribunal. There would seem more reason to opt for a permanent tribunal to interpret and implement agreed norms, although it was for States to determine in each specific case by what means a dispute should be resolved. In order to win the broadest possible support, States should be given latitude to choose the type of tribunal even though that was not the best solution from the legal point of view. It was also essential that, under certain circumstances, the resolutions of the law of the sea tribunal, the International Court of Justice, courts of arbitration or international organizations should be binding.

6. He wished to rebut the argument generally advanced to the effect that an international tribunal was incompatible with the principle of State sovereignty, pointing out that States were the sole source of the competence of such tribunals and, in the case of conventions the main body of which was composed of norms of *lex ferenda*, it was States which approved the substantive and adjective rules. Nor was the argument concerning the uncertainty of customary international law valid, since, by definition, the convention would contain sufficient generally accepted substantive rules. Moreover, since the convention would be the product of the co-operation of all countries in the world, the argument that international law was predominantly European in origin could not be used.

7. The composition proposed in annex I C, article 3, was highly interesting, for it would indeed be best to guarantee if possible in the convention itself equitable geographical representation. Naturally, interim provisions would be required until such time as a sufficient number of countries had acceded to the convention. Alternatively, the Conference might issue a declaration on that point, there being precedents in the declarations of the Law of the Sea Conference of 1958. The tribunal, which was the last resort in the settlement of disputes, should be integrated with the other means provided under international law; however, that did not imply that all disputes should be submitted to the tribunal. The aim of a good system for the settlement of disputes was not to open the door to litigation but to provide appropriate instruments according to the nature of the dispute, for not all disputes should be submitted to compulsory jurisdiction. In line with that thinking, it would be better to refer to "consultation" rather than "exchange of views" in article 4 of the chapter on settlement of disputes. Consultations were more formal and detailed and included consideration of the settlement of the dispute.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

8. It would be worth while to attempt to simplify the system relating to general and special competences. In other words, disputes should as a rule be submitted to the regular procedure and only under exceptional circumstances should they be submitted to special procedures. Moreover, it did not follow that special procedures required special bodies. A tribunal having general competence could determine certain matters by means of special procedures instead of ordinary ones. Indeed, so far as possible such tribunals should be strengthened. Reasons should be given for the different consequences of decisions arrived at through special procedures, for example, why the procedures outlined in the substantive chapters of the convention could be appealed to the tribunal having general competence, whereas decisions arrived at through the special procedures outlined in the annexes would be final.

9. Referring to supervision of the legality of acts of the International Sea-Bed Authority, he said that in part I of the single negotiating text, in document A/CONF.62/WP.8, the Authority's judicial organ appeared to have competence to deal with all contentious matters. Accordingly, supervision of the legality of the Authority's acts must be entrusted to the law of the sea tribunal to be created under part IV (A/CONF.62/WP.9) or else the Authority's judicial organ should continue to see to the application of the principle of legality and the law of the sea tribunal should be given competence for other kinds of matters, including disputes between the Authority and States. If the Authority's judicial organ were to be responsible for seeing to the principle of legality, its decisions should be final. Article 10, paragraph 4, seemed to indicate that the judicial organ's decisions could be appealed. On the whole, parts I and IV needed to be extensively co-ordinated.

10. Referring to the exceptions to compulsory jurisdiction referred to in article 18, he said that in outlining the exceptions great care should be taken to use language that aptly described the particular situation and to avoid general and abstract terms, for otherwise a wide loop-hole would be provided through which States could evade their obligations. Moreover, the exceptions should relate only to compulsory jurisdiction, not to other means for the settlement of disputes. Compulsory conciliation might be a valid substitute for the tribunal in certain cases. There should be no unequal treatment of the exceptions unless that approach was carefully defined. Thus, with regard to the exceptions which States could unilaterally decide upon, one might question the reasons that might be used to support the notoriously unequal treatment concerning matters relating to discretionary rights, sea boundary delimitation between States, military activities and matters before the Security Council. Reserving his position on the exceptions, he said that one might question the reasons why, in order to be legitimately accepted, sea boundary delimitations had to be accompanied by an indication concerning regional or other third-party procedures entailing a binding decision. That would be tantamount to maintaining that all solutions except for the strongest, namely that which was binding, could be rejected. In addition, it would be better not to make any exception with regard to disputes before the Security Council. There was no contradiction between measures which the Council might take when a dispute constituted a threat to international peace and security and the use of any of the peaceful solutions, including compulsory jurisdiction. The Council remained competent to deal with any dispute that constituted a threat to peace and could take any step that fell within its competence; however, those measures were entirely consistent with the use of means that might be established in the Convention as a development of Article 33 of the Charter.

11. Referring to national and international jurisdiction, he said that, given the situation of customary law and the controversy on that subject, the brief mention in article 14 should probably be expanded. The proposal in article 13 concerning access to the tribunal was very broad, since, according to that article, any natural or juridical person could have such access on an equal footing with the contracting parties. So far only States were entitled to have direct and immediate access to the International Court of Justice, and although the door had been opened to allow individuals to have access to regional tribunals it would be premature to pass from a restrictive to an open practice without a trial period. Although article 13, paragraph 4, stated that a natural or juridical person could have access to the procedures for the settlement of disputes provided for in the convention, it was his understanding that none of the other means for settlement of disputes, not even the prior exchange of views referred to in article 4, should apply. It would seem acceptable that under certain circumstances some private law companies might have access to international tribunals. That would be particularly true with respect to companies which had entered into contracts with the International Sea-Bed Authority. With regard to other maritime zones and other activities, it would be preferable and more consistent with the current state of development of the international community for States to continue to be bearers and agents of claims. The interests of individual fishing or shipping companies would be protected under the Convention but would have to be guaranteed via the State which assumed responsibility for bringing up the case. Finally, referring to the memorandum contained in document A/CONF.62/WP.9/Add.1, he noted with satisfaction that the intention of the draft had been to establish a limited degree of access for natural or juridical persons.

12. Mr. HARRY (Australia) said that the new convention on the law of the sea would have to be as comprehensive and unambiguous as possible. It would have to represent a bargain in the allocation of the seas' resources and a balance between the alternative uses of the sea. The primary objective had to be to prevent disputes from arising through ignorance or secrecy and to provide the necessary machinery so that no significant problem of interpretation could long remain without a final and authoritative ruling. Drafting of the provisions relating to the settlement of disputes should not be left until agreement had been reached on the substantive parts of the convention because many provisions of the convention would be acceptable only if their interpretation and application were subject to expeditious, impartial and binding decisions.

13. His delegation hoped that there would be general agreement that the convention required the parties to make available to each other through the Secretariat of the United Nations or other appropriate channels information regarding the adoption or application of measures within the scope of the convention. It should also be agreed that the contracting parties must have an obligation to settle peacefully any dispute arising between them on the interpretation or application of the Convention and that that obligation should apply to all parts of the convention. The parties should be able to select, by agreement, any peaceful means of their own choice. All existing bilateral agreements which might cover any aspect of the subject-matter of the convention and were not inconsistent with it should continue in force. The method of settlement should be a matter for the parties themselves, and no element of compulsory jurisdiction or settlement should be involved.

14. There was a large measure of agreement that many disputes relating to the application of the convention should be dealt with initially by special procedures. Priority should be given to such procedures, and other machinery for settling disputes should not be applicable until such procedures had been concluded. Findings of fact by a special

procedure should normally be conclusive, and in the interest of speed and certainty there should normally be no appeal.

15. His delegation also felt that it was desirable to establish a new tribunal as an alternative to the International Court of Justice in order to settle disputes relating to the interpretation of the convention and that the new law of the sea tribunal should have jurisdiction in a dispute unless the parties had accepted the jurisdiction of the Court.

16. It was most important that the law of the sea should be fixed and certain and that the system for settling disputes should be prompt and just. However, it would still be useful to leave scope for arbitration and conciliation, and the system established in the annex to the Vienna Convention on the Law of Treaties[2] was a convenient precedent which should be adapted to meet the special needs of parties to disputes relating to the law of the sea.

17. The acceptability of conciliation to the majority of States was demonstrated by General Assembly resolution 1995 (XIX) which established the United Nations Conference on Trade and Development. The applicability of conciliation to even such sensitive areas as human rights was shown by the acceptance of 82 States from all regions of the conciliation machinery established by Part II of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966.[3]

18. The most difficult problem was that of exceptions and reservations and of the types of disputes in which the parties might be free to exclude a system of binding settlement. If exceptions were too numerous or too broadly defined, the value of the system would be reduced and the possibility of securing agreement on compromises subject to future interpretation would also be diminished.

19. A solution to the problem of settlement of disputes had to reflect a balance between the rights of the coastal State over its resources and the rights of others. Where the rights of other States were not involved, the coastal State might well be accorded the exclusive right to enforce decisions made in the exercise of absolute discretion. Where there were alternative or competing uses of an area, and where the rights of the international community or another State were involved, the implications of the revolutionary new legal concept of the economic zone had to be considered.

20. Mr. CHEOK (Singapore) said that the convention which finally emerged would be a finely balanced package covering the rights and obligations relating to the economic zone, the right of transit of international straits, the rights of land-locked and geographically disadvantaged States and the powers and competence of the Authority to administer the common heritage of mankind. It was of paramount importance that such a negotiated balance not be disturbed by unilateral and arbitrary interpretation. His delegation therefore supported the concept of a compulsory procedure for settlement of disputes. Well-designed legal procedures would give smaller countries an effective means to vindicate their rights against larger countries, and since even the large and powerful countries had an interest in the peaceful settlement of disputes, both would gain by the effective application of agreed rules under equality before the law. A compulsory settlement procedure would ensure a certain degree of uniformity in the interpretation of the convention. It could prevent a dispute from deteriorating into a serious conflict, and it would enhance the role of law in international relations and make for rational and effective enforcement of the new law of the sea.

21. Past precedents on the compulsory settlement of disputes, with their optional provisions, had proved disappointing and unsatisfactory. Of course, compulsory settlement procedures should be applicable only when attempts to reach an amicable settlement diplomatically had failed.

22. The forms of compulsory settlement procedure could include reference of disputes to the International Court of Justice, to a law of the sea tribunal and to arbitration as well as other special procedures. A number of procedures might be given equal standing and the defendant might be allowed the choice of a forum. What was essential, however, was that all inter-State disputes concerning the interpretation and application of the convention should be settled in accordance with the procedures established by the convention and not in the domestic tribunals of the coastal State, that the application of the dispute settlement procedure should be mandatory and not optional and that any procedure chosen by the disputants should result in a binding decision.

23. The single negotiating text submitted by the President had successfully amalgamated the various earlier proposals within the limits of practicality. It was based on the assumption that binding provision for the settlement of disputes was necessary and would allow the parties freedom to choose among the various means of settlement. It was successful in blending together general and functional dispute settlement methods and provided that most of the procedures were available not only to States but also to international organizations and private persons. With respect to the question which had been raised regarding possible limitations on the compulsory settlement procedures, his delegation felt that the exclusion of disputes relating to maritime zones within national jurisdiction would reduce greatly the value of a dispute settlement provision and that exceptions should be kept to a minimum in order to ensure that the rights negotiated and incorporated in the convention were not negated by subjective interpretation.

24. The compulsory settlement of disputes on the basis of strict legality was also in the interest of the developing countries. It would protect their rights under the convention and would protect them against extra-legal, political and economic pressures from larger and stronger countries.

25. His delegation hoped that the single negotiating text on the settlement of disputes would prove generally acceptable; it reflected the views of many delegations and could form a basis for a final compromise solution.

26. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the strengthening of peace and security and the development of international co-operation should serve as the basic guideline in the application of the legal provisions of the new convention as well as in the settlement of related issues. That goal could not be achieved through procedures alone. The new convention had to minimize, even if it could not eliminate, the possibility of friction and disputes between States. Its provisions, especially those on questions of substance, had to be mutually acceptable in order to create the most favourable conditions for the implementation of appropriate procedures for settling disputes.

27. The most effective means of dispute settlement was direct negotiations between the parties concerned. Most important in that connexion were the provisions stipulating that if a dispute arose between States the parties should proceed expeditiously to exchange their views regarding settlement and the provisions regarding consultations and the exchange of information with respect to the adoption by States of certain measures provided for in the convention and affecting other States. In the absence of successful negotiations, provision would have to be made for an appropriate range of dispute settlement procedures and for the

[2] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

[3] General Assembly resolution 2106 A (XX).

right of every State Party to the convention to choose the procedures it found most suitable. The nature of the procedure, however, should be determined by the nature of the dispute and the convention should clearly stipulate that, unless otherwise agreed by the Parties, a dispute between them could be settled only by a procedure accepted by the Party against which the proceedings had been instituted.

28. It was obvious that the convention should exempt certain categories of disputes from dispute settlement procedures. Such exceptions, however, should not include "disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention." The value of the procedures of dispute settlement would be considerably diminished if they did not protect the legitimate rights and interests of other States Parties to the convention.

29. His delegation also felt it necessary to point out that disputes relating to the interpretation and application of the convention could by their very nature only be disputes between States and therefore only States could be parties to the dispute. To allow private companies and various intergovernmental organizations to resort to the dispute settlement procedures would be unwarranted both from the standpoint of substance and from the juridical point of view. An abnormal situation would arise if a private company could start a dispute with States by trying to impose upon them an interpretation of the provisions of the convention which was most favourable to the company. The right of private companies to take a sovereign State to court would violate the principle of sovereignty. Private companies should not be given direct access to the dispute settlement procedures. If the State whose nationality the private company possesses were not involved in the dispute, no international dispute should arise under the terms of the convention. With respect to international organizations, the Charter of the United Nations did not authorize the United Nations to participate in disputes with States in matters relating to the interpretation and application of any convention, and it was therefore unreasonable to include in the convention a general rule of law granting such a right to other international organizations.

30. Mr. BEEBY (New Zealand) said that his delegation had always believed that it would be essential to include, as an integral part of the convention, machinery for the compulsory third party settlement of disputes arising out of the interpretation or application of the convention. Because of the vast area of law under discussion at the Conference and the novelty of much of that law, many of the articles of the new convention would have quite a general character and would have to be developed and made more precise through their application to particular situations by the practice of States and of the International Sea-Bed Authority. The new convention would thus leave ample scope for differing interpretations, and it was essential that there should be a system for the compulsory, impartial and third party settlement of disputes arising from it. If the Conference did not provide for such a system, it, like other law-making conferences of recent years, would have failed to establish a permanent and stable solution to the problems confronting it.

31. The dispute settlement procedure should ensure that the injunction of the Charter of the United Nations that international disputes should be settled by peaceful means was observed. That principle was clearly of paramount importance in relation to a Conference which was determining the fate of four sevenths of the earth's surface. An effective dispute settlement procedure should ensure the uniform interpretation and application of the convention, giving certainty and solidarity to the new law of the sea, and should cement the delicate accommodation of interests which the new convention would represent. It should also ensure that the interests of developing countries and small countries were protected and his delegation attached great weight to that consideration. The availability of neutral legal procedures in which the principle of equality prevailed would shelter small and developing countries from the pressures which might otherwise be brought to bear on them by more powerful nations. Since virtually the whole of the international community would have participated in creating the new convention, individual countries should be prepared to commit themselves to the agreed procedures for the settlement of disputes.

32. With regard to the problem of finding an acceptable judicial body to which disputes arising out of the new convention should be sent, his delegation believed that the proposal made at the second session of the Conference that each State at the time of its adherence to the convention should be able to choose the International Court, *ad hoc* arbitral tribunals or the proposed new Law of the Sea Tribunal as the body it favoured would constitute a means of satisfying the competing preferences of different States which had given rise to so much disagreement at the first session of the Conference. However, his delegation did not think that the proposals made in document A/CONF.62/WP.9 whereby the Law of the Sea Tribunal would become the primary tribunal represented an improvement. The concept of choice of jurisdiction which had evolved at the second session was simpler and more likely to be acceptable to States which had a strong preference for one or another of the three proposed methods of dispute settlement.

33. With regard to the question raised in part I of the single negotiating text (see A/CONF.62/WP.8) as well as in the new document as to whether there should be one tribunal for disputes relating to the international area of the sea-bed and another for disputes relating to other parts of the convention, his delegation believed that it would be both expensive and unnecessary to create two new tribunals and it could see no reason why a tribunal concerned with disputes relating to the international area of the sea-bed should not have a wider role.

34. With regard to the question of special procedures, he noted that the procedure for settling disputes relating to the international area might be said to be special in the sense that, unless the parties agreed otherwise, only one body would deal with such disputes. There was also a case for creating special procedures to deal with the highly technical issues which might arise in relation to fisheries, pollution and scientific research. However, the Conference should not assume that all disputes relating to fisheries, pollution or scientific research would be best dealt with by a special procedure, since disputes might arise regarding each of those topics which related exclusively to the interpretation of one or more provisions of the convention. The Conference should also consider very carefully what procedures should apply if a particular dispute appeared to involve both technical issues and the question of the interpretation of one or more provisions of the convention. The best solution to that problem might be to provide that, if either party took the view that an issue other than a technical one was raised, the dispute should be dealt with under the general, and not the special, procedure. The Conference should avoid complicated and unwieldy procedures under which matters dealt with by a specialist body would be reviewable by one of the general dispute settlement tribunals; his delegation believed that decisions taken under special procedures should be limited to technical issues and should be final.

35. His delegation believed that if too many exceptions were made to a system of compulsory judicial settlement, both the system and the relevant rules of substantive law

were liable to be seriously weakened. Furthermore, insistence on exceptions which were conceived in terms of the protection of one interest only could make it much more difficult to reach a negotiated consensus on the substantive rules. If there were to be any exceptions, his delegation believed that they should be the narrowest kind and should be inserted only for overwhelmingly cogent reasons. With regard to the proposed exception for disputes concerning military activities, he noted that, in the context of the convention, most disputes concerning military activities would arise out of some action that had been taken by a government vessel or aircraft. Such vessels and aircraft must plainly continue to be exempt from the exercise of national jurisdiction, and that was a strong reason for not excluding disputes arising from their activities from the scope of a system of international jurisdiction. His delegation considered that the proposed exception relating to disputes arising out of activities in the exclusive economic zone was misconceived, since coastal States as well as other States might well need the protection of a dispute settlement procedure in relation to activities in the exclusively economic zone. It even had doubts regarding the modified form of the exception contained in article 18 (1). His delegation believed that coastal States should retain substantial discretion in the exercise of their regulatory and enforcement powers under the convention but that there should be no broad exception as had been proposed.

36. On the question of how the Conference could best continue its work on the settlement of disputes, his delegation realized that doubts had arisen over the future of the informal group which had met on a regular basis at the first three sessions of the Conference. However, he doubted that it would be practicable, especially from the point of view of the small delegations, to go to the length of creating a fourth committee.

Mr. Evensen (Norway), Vice-President, took the Chair.

37. Mr. KNOKE (Federal Republic of Germany) said that his delegation regarded a comprehensive, effective and expeditious dispute settlement procedure as an indispensable element of the convention on the law of the sea. The convention would contain many provisions which aimed to strike an equitable balance between the interests of coastal States and of other States, and since those provisions would be necessarily framed in rather general terms their application to specific cases might easily give rise to disputes about their proper interpretation. His delegation was therefore unable to accept such sweeping exception clauses as those contained in article 18 of document A/CONF.62/WP.9, which would have the effect of leaving a major part of the most likely disputes outside the scope of the settlement procedure, particularly those disputes in which legal protection was sought against a one-sided interpretation of the rights of coastal States vis-à-vis other States.

38. His delegation had an open mind on the various options proposed for the institutional set-up of the dispute settlement system. Although it believed that the International Court of Justice, as the principal judicial organ of the United Nations, was best qualified to assume a primary role in that respect, it would also be prepared to submit disputes to any other institution which offered similar guarantees for an objective and impartial judgement. It therefore regarded article 9, which provided for a permanent law of the sea tribunal as the primary judicial organ, as unnecessarily restrictive. It had become apparent at previous sessions of the Conference that different States favoured different options for arbitration, and the Conference should not therefore exclude recourse to any of the three proposed procedures, but should envisage a system which might be acceptable for as many States as possible and would be likely to form the basis of a consensus. His delegation believed that the flexible approach contained in article 9 of the text prepared by the Informal Dispute Settlement Group (SD/Gp/2nd Session/No.1/Rev.5) better conformed to the situation. It therefore suggested that article 9 of document A/CONF.62/WP.9 be replaced by that text. That system might have the disadvantage of not providing for the desirable continuity of jurisprudence in law-of-the-sea matters, but that disadvantage might to a certain extent be overcome by providing for a procedure by which, for example, an arbitral tribunal would be empowered to request an advisory opinion of the International Court of Justice or of the law of the sea tribunal where questions of general international law or general interpretation of the law of the sea convention might have to be decided on.

39. His delegation was prepared to accept, as a fourth option, the settlement of disputes by special commissions; such jurisdiction could be acceptable in certain defined fields where technical questions had to be decided, provided that the relationship of those procedures to the general system for the settlement of disputes was clarified and that the latter remained applicable where the dispute related to questions outside the scope of the technical field within the competence of such a commission.

40. In questions relating to the international sea-bed régime, the general dispute settlement procedure could apply, and that was a good argument for integrating the dispute settlement procedures envisaged in part I of the single negotiating text into the general dispute settlement system of the convention or at least for harmonizing both systems so as to avoid any further proliferation of jurisdictions and complication of the whole system. However, special consideration must be given to those categories of cases where disputes arose out of acts of the organs of the International Sea-Bed Authority vis-à-vis States or natural and juridical persons operating in the international sea-bed. In view of the extensive powers which were to be accorded to the Authority in that respect, effective judicial control was necessary, and special procedures, but not necessarily special judicial institutions, must be provided for. Disputes arising between the International Sea-Bed Authority and the individual operator would probably be best settled by arbitration, because they would mostly turn on the special terms of the contract and the specific situation rather than on the general interpretation of the convention. In such cases, the individual operator should have the option of using arbitration if a clause to that effect had not already been agreed on between the parties beforehand.

41. With regard to the exceptions from the dispute settlement procedure contained in article 18, his delegation believed that it was erroneous to contend that the sovereignty of a coastal State would be infringed if the exercise of its rights in the territorial sea and the economic zone could be reviewed by an international tribunal, since dispute settlement as envisaged in part IV of the single negotiating text related only to the application and interpretation of the convention and it had never been asserted that such settlement was incompatible with the sovereignty of the parties to a dispute. Such a position could only lead to one-sided interpretations and international conflicts, which were precisely what compulsory dispute settlement aimed to prevent. Those who advocated such an exception seemed to be concerned that dispute settlement procedures might be used to hamper the exercise of the coastal States' discretionary regulatory powers where the convention provided for such discretionary powers. That, too, would be no convincing argument for negating the recourse to judicial and other dispute settlement procedures where rights of other States were at stake. The minimal rights in the territorial sea or the

economic zone accorded to other States under the convention were entitled to as much legal protection as the regulatory powers of coastal States, particularly as coastal States could act first and enforce their interpretation of the convention against foreign ships. Otherwise, the procedural provisions in the dispute settlement chapter of the convention would virtually render illusory the rights of other States which had been expressly granted in the substantive provisions of other parts of the convention. His delegation therefore suggested that article 18, paragraphs 1 and 2 *(a)*, should be amalgamated and amended so as to bring them in line with the substantive provisions in other chapters of the convention. Thus, the coastal State's exercise of its exclusive jurisdiction should be exempted from review by the competent tribunal only in so far as the convention expressly or implicitly accorded a discretionary power to the coastal State, provided that in exercising such discretion the coastal State did not interfere with other States' rights, neglect generally accepted international criteria and standards or abuse its discretion to the detriment of other States.

The meeting rose at 1.05 p.m.

59th meeting

Monday, 5 April 1976, at 3:25 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT said that the Foundation for the Peoples of the South Pacific, Inc., a non-governmental organization in consultative status with the Economic and Social Council, had asked to be invited to participate in the Conference. If there were no objections, he would take it that the Conference decided to include that body in the list of interested non-governmental organizations and to issue an invitation to it in accordance with rule 66 of the rules of procedure.

It was so decided.

Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add. 1)

2. Mr. DE LACHARRIÈRE (France) said that if the international law elaborated by the Conference was to effectively regulate the actions of States, it was essential to provide machinery for the settlement of disputes which might arise in connexion with the application of the new law of the sea. Disputes relating to the delimitation of the areas of jurisdiction of States, which so far had been few in number, would increase as a result of the extension of territorial waters and the adoption of the concept of the economic zone, while delimination between the continental shelf and the international area could give rise to other disputes. Where there had previously been a single jurisdiction there would be a plurality of powers, giving rise to new conflicts. The "deliberate ambiguity" of certain provisions was another source of disputes. In creating innumerable occasions for disputes, the Conference must at the same time adopt provisions governing the peaceful settlement of such disputes.

3. In the opinion of his delegation, the machinery for the settlement of disputes approved by the Conference would have to be as broad as possible in scope and suit the specific features of international law in general, and of the law of the sea in particular. That meant, first of all, that the illusory over-simplification of applying to relations between States the machinery appropriate for domestic use should be avoided. The principle of the sovereign equality of States necessarily implied that any international jurisdiction was limited and exceptional, and that recourse to an international tribunal could only be an auxiliary procedure for the settlement of disputes. In addition to that initial conclusion there were certain consequences that derived from the specific features of the law of the sea, which was made up of a complex set of varied legal norms which in turn could give rise to a great variety of disputes. In order to settle them, it would seem wise to begin by classifying disputes by category and by determining the different variables which needed to be taken into account when choosing the methods for settling disputes. That pragmatic approach would make it possible to adopt a set of procedures suited to the nature and subject of each category of dispute. His delegation was not in favour of including among those procedures the possibility of a permanent tribunal having general jurisdiction. States were quite forthright about establishing a specific link between the legal rules they advocated and the peculiarities of their particular situation, especially their geographic situation. From that point of view, a tribunal constituted beforehand, however well chosen it might appear in the abstract, bore the strong risk, in the case of a concrete difference, of being badly constituted, perhaps open to challenge or at all events without moral prestige.

4. Instead, his delegation proposed the acceptance of the principle of settlement through impartial third parties designated in each case by the parties to a dispute and, in application of that principle, it proposed that provision should be made for special procedures, on the one hand, and for arbitration proper, on the other hand.

5. The special procedures would be applied in certain clearly defined areas relating to easily definable problems. In some spheres, recourse to qualified experts provided the best chance of ensuring objective consideration of cases from an essentially technical standpoint. In that way, the risk of decisions motivated by considerations extraneous to the subject-matter of the dispute would be avoided. Problems of a scientific and technical nature which might arise in connexion with the application of the convention in the field of fisheries, marine pollution and scientific research would thus be dealt with by *ad hoc* bodies, composed of independent experts selected by the States parties to the dispute from a list of experts, which could be prepared at the request

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.59

59th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

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Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add. 1)

2. Mr. DE LACHARRIÈRE (France) said that if the international law elaborated by the Conference was to effectively regulate the actions of States, it was essential to provide machinery for the settlement of disputes which might arise in connexion with the application of the new law of the sea. Disputes relating to the delimitation of the areas of jurisdiction of States, which so far had been few in number, would increase as a result of the extension of territorial waters and the adoption of the concept of the economic zone, while delimination between the continental shelf and the international area could give rise to other disputes. Where there had previously been a single jurisdiction there would be a plurality of powers, giving rise to new conflicts. The "deliberate ambiguity" of certain provisions was another source of disputes. In creating innumerable occasions for disputes, the Conference must at the same time adopt provisions governing the peaceful settlement of such disputes.

3. In the opinion of his delegation, the machinery for the settlement of disputes approved by the Conference would have to be as broad as possible in scope and suit the specific features of international law in general, and of the law of the sea in particular. That meant, first of all, that the illusory over-simplification of applying to relations between States the machinery appropriate for domestic use should be avoided. The principle of the sovereign equality of States necessarily implied that any international jurisdiction was limited and exceptional, and that recourse to an international tribunal could only be an auxiliary procedure for the settlement of disputes. In addition to that initial conclusion there were certain consequences that derived from the specific features of the law of the sea, which was made up of a complex set of varied legal norms which in turn could give rise to a great variety of disputes. In order to settle them, it would seem wise to begin by classifying disputes by category and by determining the different variables which needed to be taken into account when choosing the methods for settling disputes. That pragmatic approach would make it possible to adopt a set of procedures suited to the nature and subject of each category of dispute. His delegation was not in favour of including among those procedures the possibility of a permanent tribunal having general jurisdiction. States were quite forthright about establishing a specific link between the legal rules they advocated and the peculiarities of their particular situation, especially their geographic situation. From that point of view, a tribunal constituted beforehand, however well chosen it might appear in the abstract, bore the strong risk, in the case of a concrete difference, of being badly constituted, perhaps open to challenge or at all events without moral prestige.

4. Instead, his delegation proposed the acceptance of the principle of settlement through impartial third parties designated in each case by the parties to a dispute and, in application of that principle, it proposed that provision should be made for special procedures, on the one hand, and for arbitration proper, on the other hand.

5. The special procedures would be applied in certain clearly defined areas relating to easily definable problems. In some spheres, recourse to qualified experts provided the best chance of ensuring objective consideration of cases from an essentially technical standpoint. In that way, the risk of decisions motivated by considerations extraneous to the subject-matter of the dispute would be avoided. Problems of a scientific and technical nature which might arise in connexion with the application of the convention in the field of fisheries, marine pollution and scientific research would thus be dealt with by *ad hoc* bodies, composed of independent experts selected by the States parties to the dispute from a list of experts, which could be prepared at the request

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

of the States parties by the international organizations competent in each case, namely for fisheries the Food and Agriculture Organization of the United Nations (FAO), for pollution the United Nations Environment Programme and for scientific research the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Recourse to such special committees should be compulsory in the event of failure of negotiations, and their decisions should be binding on the parties to the dispute. They could also be given fact-finding and even conciliation functions if the States parties to a dispute should so decide.

6. Secondly, the machinery of special procedures could also be used for the settlement of disputes relating to the exploration and exploitation of the international sea-bed area. There account had to be taken of the characteristics of the legal régime established by the Conference and, in particular, of the establishment of the proposed International Authority. In that regard, his delegation could not agree to the establishment of a permanent judicial organ within the framework of the Authority because, since the Authority could itself be a party to a dispute, there was no likelihood that one of its organs, even its judicial organ, could settle such a dispute equitably. An impartial judge should be *supra partes*, especially when the issue was to determine the legality of an act by the Authority in terms of the convention.

7. However, the system of special committees could be applied in the case of disputes not arising out of the execution of contracts entered into by the Authority. That formula would make it possible to suit the settlement procedures to widely varying types of dispute between States, or between the Authority and a State, relating to the definition of an advance prospecting operation in the area, or an operation involving the evaluation of resources, or to any other problem of an essentially economic nature. In those spheres, before resorting to the special committees, provision could be made for prior consideration of the dispute by the Technical Commission or the Economic Planning Commission of the Authority with a view to achieving conciliation.

8. He stressed that, in any event, the various special procedures would not cover all disputes arising out of the application of the convention; they would apply essentially to disputes of a technical rather than a legal or political nature. Accordingly, in addition to the system of special procedures, his delegation believed that provision should be made for the possibility of arbitration to be applied in two clearly defined areas.

9. First, it would apply in the case of disputes of a contractual nature in which the International Authority might be involved. The various contracts concluded by the Authority or Enterprise, on the one hand, and by States or natural or juridical persons, public and private, on the other hand, with the exception of employment contracts—to which the normal procedures of the United Nations system would be applicable—should include an arbitration clause whereby any dispute arising in connexion with the interpretation or execution of the contract would be submitted, at the request of one of the contracting parties, to an arbitration body, on the understanding that the composition of that body would be determined, in each particular case, in the light of the specific problem involved.

10. Secondly, his delegation was in favour of providing for arbitration by including in the convention a general clause for the compulsory settlement of disputes. However elaborate and specific an international convention of the kind that the Conference was required to draft might be, the possibility of differing interpretations as to the way in which the States parties should apply its provisions could not be ruled out in advance. His delegation therefore considered it essential to include a clause on the compulsory arbitration of disputes relating to the interpretation or application of the convention which involved two or more States parties or the International Authority and one of its member States. In any event, it would be a mistake to rule out the possibility of having recourse, before resorting to the arbitration machinery, to a conciliation procedure which could be entrusted to a third party.

11. The system outlined could be criticized on two counts. First, there was the need for a prompt decision in certain cases, especially in the case of seizure of vessels by a State, and the delays inherent in the establishment of an arbitral tribunal would not be conducive to such a decision. In such cases, his delegation was in favour of empowering a special body, which could be formed within the Inter-Governmental Maritime Consultative Organization (IMCO), to take the necessary emergency measures, which would in no way prejudge a subsequent settlement regarding the merits of the dispute.

12. The second criticism was that uniformity of jurisprudence was useful for the interpretation of an international convention, whereas the diversity of arbitral decisions would be a drawback. The contrast seemed somewhat exaggerated. On the one hand, the divergencies in arbitral jurisprudence were explained by the fact that arbitral decisions covered a long period, over which the law had evolved; moreover, they reflected differences pertaining to the legal framework within which the arbitrators had to act, and they related to problems that were hardly comparable in view of their extreme diversity. On the other hand, in spite of the supposed uniformity of jurisprudence in the case of an international tribunal, a considerable evolution in jurisprudence was to be noted. In conclusion, he wished to emphasize, on behalf of a Government currently involved in arbitration on a matter concerning the law of the sea, the advantages which arbitrators had over judges. First, Governments wanted their disputes to be, or at least agreed that they should be, settled by impartial third parties on condition that the latter did not lay down the law. It would be possible in the case of a permanent binding tribunal for a certain temptation to arise of government by judges, but one had still to hear of government by arbitrators. The second advantage derived from the fact that the basic problem with regard to the settlement of international disputes was to ensure that States agreed that the settlement should be entrusted to third parties. Such acceptance could not be imposed on a soverign State. Instead, its consent was needed, and experience showed that such consent depended on trust. Ultimately, in his delegation's opinion, the basic advantage of arbitration, at the current stage of international relations, was that that trust was placed in arbitrators rather than in judges.

13. Mr. LOGAN (United Kingdom) said that his country, which had always supported the principle of the peaceful settlement of disputes, supported the inclusion in the convention on the law of the sea of procedures leading to binding decisions on the basis of law. Of course, negotiation and conciliation had an important role to play, but some disputes might prove so intractable that they could only be resolved through binding procedures.

14. His delegation believed that the appearance of document A/CONF.62/WP.9 served to emphasize the importance of the settlement of disputes in the over-all effort to establish a law of the sea which was not only just but also effective. What was particularly notable was the concept that States, on ratifying the new convention, would at the same time accept the principle that disputes about the meaning of the new convention should be settled by peaceful means. Experience showed that when a dispute had arisen, the deterioration of bilateral relations made it difficult for the States

concerned to agree on the appropriate type of procedure for resolving their differences and, in those circumstances, minor differences could become serious disputes. For that reason, he was in favour of the principle, implicit in the single text, that the procedure for the settlement of disputes should be indicated in advance. Such a system had a second advantage, in that States were less likely to become involved in disputes, because the knowledge that the adoption of extreme positions could be questioned before some impartial body might well act as a restraining influence. Furthermore, the new convention would contain delicate compromises, and an impartial body would help to ensure that all States kept those compromises. His delegation believed that the proposals in part IV of the informal single negotiating text would serve to harmonize State practice in implementing the Convention, and, it wholeheartedly endorsed the views expressed by the President of the Conference in paragraph 6 of his memorandum (A/CONF.62/WP.9/Add.1).

15. There were, however, some features of the single text which might be improved. In particular, he was not convinced of the need to create a new permanent tribunal of 15 judges. The number of cases that it would have to settle would probably not justify the high costs of its establishment. Those institutional problems could be avoided through arrangements facilitating arbitration. Furthermore, if a permanent tribunal was needed, the International Court of Justice already existed and had been established to settle disputes such as those concerning the interpretation of treaties and the law of the sea. He favoured the proposal for a flexible system whereby, on ratification, a State could choose between *ad hoc* arbitration, the International Court of Justice or a special tribunal. His delegation did not share the view expressed by the President, in paragraph 25 of his memorandum, to the effect that such an optional system would offend against the principles of justice. On the contrary, it would conform to the normal practice in international law. Furthermore, that system would in no way enable one party to manipulate any potentially controversial situation, since the party concerned would have opted for a particular procedure in advance of any particular dispute.

16. Secondly, except in relation to the deep sea-bed, his delegation did not consider it desirable to provide for persons other than parties to the convention to be parties to the procedures for the settlement of disputes provided for under the convention. It would therefore suggest the deletion of paragraphs 4 to 9 in article 13 of document A/CONF.62/WP.9.

17. Thirdly, his delegation felt that some of the exceptions suggested in article 18 could lead to unfortunate results. Those exceptions were so wide that they could render ineffective the entire chapter on the settlement of disputes. In particular, the exceptions in paragraphs 1 and 2 *(a)*, concerning exclusive and discretionary jurisdiction, could have far-reaching consequences. Such exceptions could even prolong and complicate the settlement of disputes. His delegation would suggest that the entire question be discussed further and that, instead of blanket exceptions, adequate safeguards could be devised.

18. Fourthly, some of the provisions in document A/CONF.62/WP.9 were exceedingly complicated and might, in the future, give rise to disputes about the meaning of the chapter of the convention that dealt with the settlement of disputes.

19. Fifthly, his delegation did not see sufficient justification for annex III on information and consultation. Present arrangements for collecting information were adequate. Furthermore, such a comprehensive system of notifications and protests could give rise to an enormous number of unnecessary and theoretical disputes. On the other hand, there might be a need for compulsory notifications on particular points covered in other parts of the convention.

20. Lastly, his delegation was ready to participate actively in any discussions leading to a revision of the text proposed by the President, with a view to including in the convention arrangements which would tend to prevent disputes from arising in the future and which would ensure that any dispute which might arise was settled peacefully and in accordance with the convention.

21. Mr. MONNIER (Switzerland) said that it appeared that the new division of the oceans, towards which the Conference was moving, would probably need to be reflected in a considerable extension of the area of State jurisdiction and a corresponding reduction in the space freely accessible to all States, and that would no doubt give rise to disputes, particularly in the sphere of jurisdiction. Hence the importance of a system designed for their settlement which conformed with law.

22. That system must include two essential conditions; it must be flexible in order to take into account the diversity of questions which might arise, and it must be mandatory so that the proceedings initiated by one party would result in decisions binding on all the other parties. The system proposed in document A/CONF.62/WP.9 did not appear to meet those two conditions and did not constitute a useful basis for negotiations, since it tried to provide for a variety of possible legal questions by instituting a large number of jurisdictional and technical bodies without, at the same time, distinguishing them precisely. It would be better and more practical to provide for recourse to familiar and well-tested procedures.

23. Two distinct kinds of dispute should be distinguished: those relating to the interpretation and application of the convention and those relating to the prospecting and exploration of the sea-bed and the expoitation of its resources. Disputes in the latter category would not often derive from the convention but rather from a contract for prospecting, exploration or exploitation, and in that case natural or juridical persons could also be parties to them. Disputes relating to the first category, if not resolved through diplomatic negotiations, should be submitted to a conciliation procedure. In a case where the parties to the dispute have agreed not to resort to conciliation or where the case has not been resolved, the dispute should be brought before the International Court of Justice. The International Court of Justice would be a suitable forum for the following reasons: in the first place, the future convention, despite its peculiar characteristics, would be an international treaty for which it was important to ensure uniform interpretation; secondly, the International Court of Justice had produced an important body of jurisprudence in the field of maritime matters and in its recent performance had proved itself sensitive to the trends and tendencies of contemporary international law; lastly, the Statute and revised Rules of the Court contained provisions which enabled it to pronounce authoritatively on questions which were highly technical or had technical aspects, as was clear from the provisions of Articles 26 and 50 of its Statute.

24. It therefore did not seem necessary to establish a new tribunal or committees of experts with powers which seemed to go beyond those of an advisory body.

25. Under the provisions of the Statute of the International Court of Justice, only States might submit disputes to it relating to the interpretation and application of the convention. International organizations should be encouraged to exercise fully the right to ask for advisory opinions and other rights conferred upon them in Article 34, paragraph 2, of the Statute.

26. Although his delegation would prefer, for the sake of security, that the parties be granted the unilateral right to submit to the Court a dispute in the general category under discussion, it would be inclined to recognize the need for the agreement of all parties to a dispute as a precondition for the initation of the procedure. In the absence of such agreement, one of the parties could submit the dispute to an arbitration tribunal which could be established along the lines of the model provided in annex I B of document A/CONF.62/WP.9; the decision of such a tribunal would be definitive and its advantages were well known.

27. For disputes relating to the prospecting, exploration and exploitation of sea-bed resources, a special tribunal should be established as already provided for in part I of the single negotiating text in document A/CONF.62/WP.8. The provisions with respect to the jurisdiction, powers and functions of that tribunal (articles 32-34 and 57-63) would have to be modified so as to narrow that jurisdiction in principle to three types of disputes, namely, those in some way related to the prospecting and exploration of the zone and the exploitation of its resources; those relating to the interpretation and application of the rules, regulations and procedures established by the Authority; and those relating to the legality of means adopted by an organ of the Authority. Access to that tribunal should be granted to States, the Authority and those natural and juridical persons which were juridically linked to the Authority.

28. His delegation was not convinced that disputes relating to fishing, pollution and scientific research needed to be subject to special procedures. Those related to fishing should be submitted to the bodies specified in regional agreements which were in force or which might be concluded. Those which affected regions in which such agreements did not exist, as well as those relating to pollution and scientific research, could be submitted to the chambers of the International Court of Justice especially established to deal with that kind of dispute or to the aforementioned special tribunal. As far as scientific research was concerned, there still remained the possibility that disputes as to whether a research project in the economic zone concerned was of a fundamental nature or was related to the zone's resources might be submitted to accelerated procedures conducted by experts.

29. Finally, the provisions relating to the dispute settlement machinery must appear in the text of the convention itself and not in an annexed protocol the signing of which would be optional. Moreover, they should not contain restrictions on or exceptions to the jurisdiction of the organs established under the general dispute settlement system, such as those specified in article 18 of document A/CONF.62/WP.9. Nor should exceptions designed to exclude the total or partial application of those provisions be allowed.

30. His delegation reserved the right to submit specific proposals on that question at an appropriate time.

Mr. Witek (Poland), Vice-President, took the Chair.

31. Mr. MONTIEL ARGÜELLO (Nicaragua), referring to the special procedures relating to fishing, pollution and scientific research, said that it would be important to reconsider whether the establishment of special committees for each of those matters was justified and if those were the only matters which justified the establishment of special committees. Similarly, the relationship between those special procedures and the general provisions would have to be determined. In that connexion, he noted that article 6 of document A/CONF.62/WP.9 provided that the general procedure would apply only after the special procedure had been concluded and provided that no settlement had been reached, while each of the special procedures provided that the decisions of the Committee should be adopted by a majority vote and be binding on all parties to the dispute. That seemed to exclude the applicability of article 6.

32. With respect to the special committees, it should be emphasized that their members would be appointed respectively by the Director-General of FAO, the Secretary-General of IMCO and the Director-General of UNESCO; that might give rise to difficulties in obtaining the acceptance of special procedures by States which were not members of those organizations.

33. Other questions which should be raised with regard to the jurisdiction of the proposed tribunals were the following. Could the system of exceptions limiting the binding jurisdiction of the law of the sea tribunal established in article 18, paragraph 2, be accepted? Could the declarations of acceptance of the mandatory jurisdiction of the International Court of Justice already regulated in other international instruments be regulated in the convention? What would happen in the case of an overlapping of various jurisdictions? Another question of far greater importance was the relationship between the law of the sea tribunal and the International Court of Justice. Would that tribunal diminish the authority of the Court? How would the possibility of conflicting jurisprudences be eliminated? With respect to the jurisdiction of the law of the sea tribunal, it should be noted that the dispute settlement procedures were open to international intergovernmental organizations and natural and juridical persons. Although it was commendable, it did not seem likely that in the current state of international law a provision of that kind would be well received. It might be more prudent to grant natural and juridical persons the status of associates in legal actions brought by their respective States.

34. His delegation felt that the exception to the dispute settlement procedures appearing in article 18, paragraph 1, deserved greater consideration and should be carefully worded so as to safeguard jurisdiction of States without affecting the interests of the international community.

35. Mr. PINTO (Sri Lanka), referring to the single negotiating text on the settlement of disputes contained in document A/CONF.62/WP.9, noted, in the first place, that an attempt had been made to prescribe methods of settlement for the widest possible range of disputes that might arise under the convention and, as far as possible, to blend the essential aspects of the various methods of settlement which had been advocated. In the second place, he felt that the basic principles of that scheme were three: the obligation to settle disputes through peaceful means (article 1), the right and duty to choose and apply an appropriate means of settlement (for example, article 2), and the duty to exchange views both as a preliminary to agreeing upon a method of settlement as well as following failure of an attempt at settlement (article 4). Thirdly, he agreed that the convention should stipulate (for example, article 8), that the jurisdiction provided for was residual and compulsory and the decisions final. Lastly, he observed that the document provided a hierarchy of procedures, commencing with conciliation and proceeding through arbitration to judicial settlement by the International Court of Justice or by the proposed law of the sea tribunal in both original and appellate jurisdiction. It was assumed that there was no strict serial or chronological progression of procedures and that the parties might select any one method directly and exclusively on the basis of mutual agreement. The law of the sea tribunal was, however, conceived as a court of appeal of last resort in the event that other remedies had failed to bring relief.

36. With regard to the "panel" or "list of names" approach to establishing membership of the conciliation com-

missions and arbitral tribunals, his delegation had no objection in principle but wondered whether the approach had contributed to increasing the efficiency and acceptability of the dispute settlement machinery. In general, parties would not have difficulties in selecting their nominee to a commission or tribunal, even without a list. The success of such procedures would depend not on any such list but rather on the existence of mutual confidence and co-operation between the parties. As to the composition of the law of the sea tribunal, he wondered if it was necessary to make explicit the geographically representative character of the tribunal, as did article 3, paragraph 2, of annex I C.

37. The proposed procedures offered the possibility for parties to choose to contract out of jurisdictional obligations or to accept only those which they considered acceptable. Article 18, paragraphs 1 and 2, for example, seemed to offer a balanced range of possible exclusions which could go far towards increasing the acceptability of the system. However, the terms of clause (ii) of paragraph 1 could be open to excessively broad interpretation and it should, therefore, be made clear that the clause did not affect sovereign rights such as those possessed by a coastal State in its exclusive economic zone. Article 13, paragraph 7, permitted the acceptance of compulsory jurisdiction only in relation to selected categories of parties, which meant, for example, that a State might agree to judicial settlement only in relation to other States and not with respect to natural or juridical persons.

38. The most difficult problem raised by document A/CONF.62/WP.9 was the problem of the applicability of the system to all types of dispute. His delegation found unsatisfactory the treatment of disputes which might arise between States, on the one hand, and natural or juridical persons, on the other, relating to part I of the convention and the new international régime of the sea-bed. While the draft showed an awareness of the multiplicity of problems which arose in connexion with such disputes, its attempts to solve them by, for example, admitting States and non-State parties to jurisdiction on "an equal footing" (article 13, para. 4) or by simply permitting parties to accept jurisdiction with respect to contracts between States and persons (article 13, para. 8) did not contribute to a just and efficient settlement of disputes or allay the sensitivities some States might have in regard to becoming a party to international legal proceedings with a non-State party. In some provisions of the draft, it appeared that there had been a failure to bear in mind that the term "party to a dispute" in the proposed text comprised not only States but also private persons, which gave rise to confusion and ambiguities. In that connexion, it would perhaps be necessary to review articles 8 and 13 among others.

39. In principle, his delegation favoured the introduction of a scheme of compulsory jurisdiction for the law of the sea. If it was decided that the investment of the financial resources and personnel necessary to establish machinery such as the proposed law of the sea tribunal was justified, his delegation would not object. However, it felt that it was vital to set up a separate system for settling disputes under part I of the convention. Such disputes would require special treatment, as parties to them could be a State, an intergovernmental organization, a private person or a State enterprise; further reasons were the commercial or highly technical nature of the problems involved, the unique and self-contained nature of the new international régime of the sea-bed and the frequency and urgency of the decisions that the Authority would be called upon to take. The special tribunal for the settlement of sea-bed disputes would be the judicial organ of the International Sea-bed Authority and would have compulsory jurisdiction, while the possibility would be left open for a system of binding arbitration with respect to certain categories of dispute.

40. The introductory article to each of the special procedures in annex II appeared to make them compulsory. The implications of that system would have to be examined carefully. Disputes relating to actions occurring in the exclusive economic zone should not be subject to those procedures and the annex should be read as subject to article 18 and the permitted exclusions. However, it should be noted that annex II offered an interesting method of involving in the dispute settlement process intergovernmental organizations with responsibilities in maritime matters. While such involvement was for the good, it might perhaps require changes in the organizations' statutes.

41. In closing, he referred to the suggestion made by the Secretary-General in his address to the Conference in Caracas at the 14th plenary meeting on 20 June 1974, concerning a periodic review of the working of the provisions of the Convention on the Law of the Sea. His delegation favoured having an assembly or general conference of member States undertake the first periodic review after the first three years, for example, and subsequently as decided at that assembly or conference. Such a periodic review could serve to prevent disputes and to mobilize public opinion in order to solve problems of a political character that might have arisen. The convening of the first conference should be an item on the agenda of the United Nations General Assembly in the second year following the entry into force of the convention. The agenda of the conference itself could be drawn up by the Secretary-General on the basis of responses to a circular letter addressed to members seeking their views well in advance of the conference.

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

42. Mr. JAGOTA (India) said that consideration of the settlement of disputes was somewhat premature at the present stage. The substantive provisions of the convention should be settled first and only then should procedural questions be discussed. Peaceful and co-operative relations between States and the proper function of international organizations depended upon the clarity of substantive law and the good faith of States and international organizations in the exercise of their powers and the performance of their functions. Procedures for settling disputes should be reserved for cases when the disputes could not be resolved by negotiations between the States concerned and should be based on the express agreement of the parties. The only exception would be disputes of a technical, contractual or commercial character, which could be referred to a third party, a judge or arbitrator, even without the prior consent of the parties.

43. The new law of the sea consisted of two parts: the first related to the international sea-bed area and its resources and the second to the other questions concerning the law of the sea. In regard to the international sea-bed area and its resources, his delegation supported the establishment of a law of the sea tribunal as a principal organ of the International Sea-bed Authority, as provided in article 24 in the first part of the single negotiating text in document A/CONF.62/WP.8. The proposed composition of the tribunal would surely prove acceptable to all participants in the Conference. The tenure of nine years for members of the tribunal was perhaps too long and might be reduced. As to its jurisdiction, the tribunal should, in his delegation's view, deal with disputes connected with commercial aspects of the work of the Authority and the Enterprise submitted to it pursuant to a contract or arrangement entered into by the applicant with the Authority or between applicants. That

was referred to in article 32, paragraph 1 *(b)*, in the first part of document A/CONF.62/WP.8. The tribunal should also give advisory opinions at the request of any organ of the Authority, as provided in article 62 of that text, in the same manner as the International Court of Justice did at the request of the United Nations or any specialized agency. In other matters, including the interpretation and application of the convention or the policy decisions of the International Sea-bed Authority regarding the opening of the area, regulation of production, distribution of products or proceeds or any other aspect of its resource policy, the decision of the Authority should be supreme. The Authority and its organs should be competent to interpret and apply the provisions of the convention in the same manner as was done by the principal organs of the United Nations. Thus, the Tribunal should not have the jurisdiction envisaged in article 32, paragraph 1 *(a)*, or article 58 of the first part of document A/CONF.62/WP.8 whereby the Tribunal might examine the legality of measures taken by the Council or other organs of the Authority and declare their decisions void. The same views applied, *mutatis mutandis*, to the jurisdiction of the other tribunals or the International Court of Justice, as the case might be, as proposed in document A/CONF.62/WP.9. As the guardian of "the common heritage of mankind", the Authority must have the requisite competence and flexibility to develop its policies and function effectively without being endangered by injunctions or interim measures of the tribunal or by having its decisions declared void by the tribunal. His delegation felt that those views were perfectly in conformity with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly in resolution 2749 (XXV) of 17 December 1970, including paragraph 15 thereof concerning the settlement of disputes. Finally, the Authority should be prepared to review that position after a period of five or 10 years. If it seemed necessary or appropriate to confer compulsory jurisdiction on the tribunal, it could do so at that time.

44. On the questions of the law of the sea, his delegation was of the view that the coastal State should have complete jurisdiction in the exclusive economic zone and other areas where it exercised sovereign rights, such as the continental shelf, both for the exploitation of resources and other economic uses, and for the establishment of installations or the conduct of scientific research. Consequently, his delegation did not support the special procedures set forth in annex II A, B and C of document A/CONF.62/WP.9, concerning fisheries, pollution and scientific research connected with activities carried out in the zone. Nevertheless, his delegation could accept the substance of the provisions contained in article 18, paragraph 1, namely, that the coastal State should ensure freedom of navigation and overflight and other legitimate uses and recognized rights of third parties within the economic zone, except in the "special areas" within the economic zone. In that regard, just as in the matter of the detention of ships covered by article 15, his delegation had an open mind. It agreed, however, that the law of the sea tribunal should have the competence to deal with disputes relating to fisheries, marine pollution and scientific research on the high seas outside the economic zone. The special procedures might also apply to such activities on the high seas.

45. Lastly, he recalled that the 1958 Conventions on the Law of the Sea had adopted the device of an optional protocol on the settlement of disputes. He suggested that the same device might perhaps be considered by the present Conference.

46. Mrs. KELLY de GUIBOURG (Argentina) drew attention to the fundamental principle that States had the general obligation to agree that any dispute between them relating to the interpretation or application of the convention should be settled through the peaceful means indicated in Article 33 of the Charter of the United Nations. Her delegation also supported the general principle of respect for the autonomy and wishes of the States parties to the convention with regard to the choice of the most appropriate peaceful means for the settlement of a dispute. In that regard, it was of the view that any system or machinery established by the convention should be ancillary to other means of settlement which States might choose by mutual agreement.

47. The essential point on which the entire debate with regard to the settlement of disputes should focus was the scope the convention should give to compulsory jurisdiction, i.e. the obligation of a State to recognize that a subject of law was entitled to petition for settlement by an international judicial body and to regard the decision of that body as final and binding. In approaching that problem, a balanced formula should be sought to reconcile the diverse interests involved. For example, distant-water fishing States might advocate the establishment of a special procedure with regard to fisheries which would include acceptance of the compulsory jurisdiction of some body; in her delegation's view, that would put coastal States at a disadvantage, particularly those developing States which did not have powerful fishing fleets and which would be obliged to institute proceedings, pursuant to their rights under the convention, in order to secure compliance with relevant regulations.

48. The general principle with regard to disputes concerning the zones under national jurisdiction should be that compulsory jurisdiction was excluded as an element in the settlement machinery. It was not her delegation's intention to make the coastal State the absolute arbiter of disputes concerning the ocean zone under its jurisdiction, since that State should always comply with the general obligation of settling disputes by peaceful means. What it could not accept was the compulsory jurisdiction of an international tribunal in respect of actions or measures taken by the coastal State in relation to the zones under its sovereignty or jurisdiction.

49. However, her delegation recognized the existence of certain rights, whose importance for the international community might make it advisable to adopt some sort of special safeguards; thus, with regard to freedom of navigation and overflight beyond the 12-mile limit of the territorial sea, her delegation could accept machinery which provided as a final resort for compulsory judicial settlement.

50. Her delegation could also accept such a solution as a general principle applicable to the areas beyond national jurisdiction; that would be warranted in view of the nature of the international sea-bed area, the type of activities to be carried out there, the establishment of an International Sea-bed Authority and the various subjects of law entitled to conduct activities in the area. As for disputes which might arise with regard to the area, her delegation was prepared to agree that, in certain cases, private natural or juridical persons might resort to the dispute settlement machinery, including the judicial body.

51. In any event, her delegation would like to make it clear that its position precluded any possibility of private natural or juridical persons instituting proceedings against a State before an international judicial body.

52. However, her delegation could not share the view of several States which had advocated the establishment of special machinery or procedures for certain disputes, such as those relating to fisheries, scientific research and preservation of the marine environment. In particular, her delegation did not agree with the argument that the establishment of such special machinery or procedures would be justified by

the desirability of creating a primarily technical judicial body to deal with disputes not necessarily of a juridical nature. In general, disputes arose as a result of a particular action, but they usually involved the interpretation of a legal rule as well; moreover, the application of a rule always entailed some degree of interpretation. In many cases disputes included questions of fact of various kinds: thus, for example, in a case involving a pollution problem and questions relating to the conservation of living resources or the exercise of freedom of navigation it would be difficult to determine which judicial body should consider the dispute. Accordingly, her delegation could not endorse the establishment of special machinery or procedures which would also imply acceptance of the compulsory jurisdiction of a judicial body of a technical or specialized character whose decisions would be final and binding; on the other hand, her delegation could agree to the establishment of scientific and technical panels in various specialized subjects which could advise States, the international authority and even the judicial body responsible for settlement of the dispute.

53. Lastly, her delegation could accept the establishment of a law of the sea tribunal having the basic function of dealing with disputes which might arise in regard to the international sea-bed area, while safeguarding the jurisdiction of the International Court of Justice in respect of the settlement of questions of compulsory jurisdiction relating to the other maritime spaces. Her delegation did not, however, advocate the establishment of several judicial bodies, since that would lead to problems of determining competence and, probably, the emergence of conflicting decisions on the same subjects.

Mr. Akhund (Pakistan), Vice-President, took the chair.

54. Mr. FERGO (Denmark) said that many of the provisions of the convention could give rise to differing interpretations, and only cumpulsory dispute settlement could ensure that such differences did not lead to serious conflicts. He considered it essential that dispute settlement procedures should be incorporated in the relevant chapters of the convention and should remain an integral part of its provisions.

55. Turning to the specific proposals in document A/CONF.62/WP.9, he found the whole system of settlement procedures very complex. It would be desirable to have a system which would provide expeditious and informal settlement procedures that would not oblige Governments to incur heavy expenditure. His delegation was in full agreement with the approach adopted in the document with regard to recourse to arbitration to solve questions relating to fisheries, pollution and scientific research; that would ensure a practical solution to disputes, with a sufficient guarantee of impartiality.

56. As for matters relating to the exploration of the deep sea-bed, the ocean floor and its subsoil beyond the limits of national jurisdiction, his delegation could support the creation of a permanent tribunal. The international rules envisaged for that régime would have to cover a very complex set of relations between the Authority, member States and natural or juridical persons; thus, conflicts in the area could best be decided within the framework of a specialized body.

57. He recalled that part I of the single negotiating text in document A/CONF.62/WP.8 contained some useful proposals for the creation of a tribunal dealing with disputes relating to the exploration and exploitation of resources of the ocean floor and the subsoil therof. It might be advisable at the present stage to embark upon a less ambitious programme, envisaging a combination of a panel of experts and a small number of permanent arbitrators who could handle problems of a technical nature relating to the administration of the régime for the international area of the oceans.

58. The proposal to give the new law of the sea tribunal a central role would raise serious difficulties with regard to the future functions of the International Court of Justice; article 9 of the text contained in document A/CONF.62/WP.9 tried to solve that problem by leaving the choice of the competent tribunal to the parties. However, even if the parties could reach agreement on the court to which they should submit their dispute, there would be a proliferation of general settlement procedures which would jeopardize the basic aim of uniformity of judicial settlement; in such circumstances, his delegation considered it necessary to simplify the system foreseen in that article. In general, his delegation would prefer the competence to settle disputes of a general character to be left to the International Court of Justice or to a special chamber created by the Court, and did not consider it advisable to create a system which could weaken the jurisprudence of the International Court of Justice with regard to such questions as the delimitation of sea boundaries between States, interference with the freedoms of navigation or overflight, or other fundamental principles of the law of the sea.

59. He also considered that the scope of the exceptions provided for in article 18 concerning the mandatory dispute settlement procedure was too far-reaching and could make it difficult for his country to accept the convention.

60. Referring to the text of article 18, paragraphs 1 and 2 (a), which provided for exclusions from the mandatory dispute settlement procedure in matters falling within the exclusive jurisdiction of a coastal State and of disputes arising out of the exercise of discretionary rights by a coastal State, he said that, if that terminology was intended to exempt questions relating to the exercise of coastal State powers in the economic zone from the mandatory third party dispute settlement procedures, then the exceptions would be so far-reaching as to undermine the whole idea of a mandatory dispute settlement procedure. Furthermore, if those exceptions were compared with the wording of article 45 and subsequent articles in part II of the single negotiating text in document A/CONF.62/WP.8, it was not clear whether decisions relating to questions such as determining the total allowable catch, other conservation measures, and scientific research or marine pollution would be left to the coastal State.

61. In his delegation's view, the urgent task facing the Conference was to establish a framework for the more detailed consideration of the question. It was therefore advisable that deliberations on the question of the settlement of disputes should take place in plenary meetings, in order to ensure the participation of all groups and all States in the elaboration of the appropriate rules.

62. Mr. ZEGRES (Chile) said that his delegation agreed that the convention should establish a system for the settlement of disputes consisting of both a general procedure and special or functional procedures for specific questions. The general procedure and the functional procedures should be linked in such a way as to ensure the unity of the system and the uniform interpretation and application of the provisions of the convention.

63. However, mandatory arbitral or judicial settlement procedures of one type or another should be applied solely to disputes concerning zones of the sea other than those subject to national jurisdiction, which fell exclusively within the competence of the courts of the State concerned. His delegation was nevertheless prepared to consider the inclusion, in the convention, of mandatory settlement with regard to specific categories of disputes relating to navigation and overflight in the exclusive economic zone. The principle of the exclusive jurisdiction of the national courts with regard to disputes relating to the maritime zones under national

jurisdiction did not imply illegal or irresponsible conduct on the part of that State, but simply meant that, in such cases, a State could not unilaterally summon another State before an international tribunal and that the parties to a dispute must endeavour to settle it by some peaceful means of their own choosing, in accordance with their obligations under the Charter of the United Nations.

64. It had been said in the Working Group that disputes over fisheries and other similar problems demonstrated the need to create a general mandatory settlement system. Actually, such disputes were not attributable to the lack of an international tribunal with mandatory jurisdiction, but to the absence of substantive and universally accepted rules. When the Conference adopted a convention and States became parties to it there would be less possibility of disputes arising over questions dealt with by the convention. It should also be borne in mind that various States were parties to regional and general mandatory settlement agreements. Furthermore, the most important element in that area was the genuine will to avoid disputes or, if they arose, to settle them in an appropriate manner, and not to accept jurisdictional obligations the aims of which were often frustrated by the inclusion of extensive reservations which impaired their scope, or by the invocation of preliminary exceptions.

65. Despite all those considerations, his delegation was prepared to consider institutionalized conciliation procedures for disputes relating to the economic zone, and the establishment of provisions enabling States wishing to do so to adopt broader jurisdictional obligations among themselves.

66. The creation of a law of the sea tribunal was a constructive idea deserving of detailed consideration. That tribunal should exist side by side with other authorities, but in cases of mandatory jurisdiction, and in the absence of any agreement between the parties on the choice of another judicial authority, the law of the sea tribunal would be the body competent to settle the dispute in question.

67. His delegation shared the view that disputes concerning the sea-bed beyond the limits of national jurisdiction raised specific problems and believed that the settlement of disputes of that type should be considered basically by the First Committee, that the settlement system adopted should be linked to the general system agreed on, and that it would be necessary to consider the possibility of allowing entities other than the contracting States, including natural or juridical persons, access to the system. However, his delegation had some reservations with regard to the access of such persons to the law of the sea tribunal or to arbitral authorities, since that would enable such persons to uphold interpretations conflicting with those of the State of which they were nationals.

68. Finally, his delegation did not consider the establishment of a fourth committee to be feasible. The nature of the question made it advisable to keep the matter within the framework of the Plenary. The question should continue to be considered, therefore, in a broadly representative official working group made up of representatives of all delegations.

69. Mr. GOERNER (German Democratic Republic) said that his delegation agreed that procedures should be established for the peaceful settlement of disputes and considered that, in accordance with the provisions of Articles 2 and 33 of the Charter of the United Nations, the States parties to a dispute must have the right, depending on the character and nature of the dispute in question, to choose for themselves the means and procedures which they considered suitable for the peaceful settlement of the dispute. His delegation agreed, therefore, with the general obligation to seek a peaceful settlement of disputes provided for in articles 1 to 4 of document A/CONF.62/WP.9.

70. Of great practical importance was the question of the relationship between the special procedures for the settlement of disputes and the general procedure. It would be useful if, in some chapters of the convention dealing with technical and scientific problems, provision was made for the settlement of the relevant disputes through special procedures, if the States concerned were unable to settle them through diplomatic channels. Such special procedures could be provided for disputes relating to fisheries, pollution, scientific marine research, the exploration and the exploitation of the sea-bed beyond the limits of the continental shelf and navigation beyond the territorial sea.

71. His delegation held the view that the competence of the committees responsible for implementing the special procedures provided for in annex II should be restricted to the settlement of disputes relating to the application of the convention.

72. It was indispensable to include in the negotiating text the so-called Montreux formula considered by the informal working group during the session held in Geneva. According to that formula, each State, when ratifying or acceding to the convention, had a right to declare that it accepted the special procedures provided for in annex II for the settlement of the disputes mentioned in article 1 of document A/Conf.62/WP.9.

73. Article 8 was less flexible than that prepared by the informal working group in Geneva and, unlike that text, established a priority for procedures in which the law of the sea tribunal occupied a privileged position. In his delegation's view, there was no reason to establish a new organ for the settlement of disputes with comprehensive competence. For that purpose, there already existed the International Court of Justice, which settled disputes relating to the application or interpretation of norms of international law, if the parties to such disputes agreed to submit them to the Court. Consequently, the proposal to establish a Law of the Sea Tribunal should be deleted from the negotiating text.

74. Furthermore, his delegation considered that the procedures for the settlement of disputes provided for in the convention on the law of the sea should be applied only to disputes between sovereign States which were parties to the convention. He could not accept article 13 of the negotiating text which provided that natural or juridical persons could be parties to procedures for the settlement of disputes on an equal footing with the contracting parties. His delegation proposed, therefore, the reference to parties which were not States should be deleted from article 13, paragraph 4. The same applied to paragraphs 7 *(b)* and *(d)*.

75. The idea contained in article 18, paragraph 1, according to which it was one of the sovereign rights of States parties to the convention not to subject certain categories of dispute to the procedures provided for in the Convention, was acceptable. However, it was necessary to establish a better balance in that article between the interests of the coastal States and those of other States parties to the convention. Coastal States should not be able to exercise their jurisdiction in a way which impaired the rights accruing from the convention to other States. That problem could arise, for example, from the wording of article 18, paragraph 2 *(a)*. Consequently, his delegation considered that that subparagraph should be deleted.

76. He also had some objections to article 18, paragraph 2 *(d)*, whereby a State could decide by unilateral declaration, at the time of ratifying the convention, whether or not the Security Council was competent in certain questions. Such a

stipulation could lead to a dangerous undermining of the security mechanism of the United Nations. It was for the Security Council alone to decide whether or not a dispute threatened international peace and security, and, on that basis, to take the measures which it deemed appropriate. Consequently, article 18, paragraph 2, should be amended so that the disputes referred to would be excluded *ipso jure* from the procedures provided for in the convention.

The meeting rose at 6 p.m.

60th meeting

Tuesday, 6 April 1976, at 10.15 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add.1)

It was decided to permit the International Ocean Institute, a non-governmental organization which had been invited to the Conference and was represented by an observer, to take part in the current debate.

1. Mr. RIPHAGEN (Netherlands), speaking also on behalf of the delegations of Belgium and Luxembourg, said that dispute settlement was not a separate branch of international law, but was related to the substantive rules in different fields of international law. With regard to the law of the sea, difficulties would arise not only as a result of traditional and new uses of the sea, but also because new concepts had emerged, such as the concepts of mankind and of environment, both transcending traditional notions of nations and territory. Those concepts required a measure of international management, including international procedures for the settlement of disputes. The development of such procedures was in the interests of all States. The abstract rules which were to be elaborated, particularly in relation to the marine environment, required methods for the settlement of disputes which conflicting interests were likely to generate. Whatever differences of opinion still existed as to the contents of the rules on dispute settlement, a balance must be struck between the interests of coastal States, those of the other users of the sea and those of the international community as a whole. That would be impossible without a set of rules the primary object of which was a functional division of rights to be exercised within the same ocean space or spaces by the various entities involved. In that respect the seas would continue to be treated in a way totally different from the way land was treated in international law.

2. While the contents of the rights of the various entities in the various maritime zones were necessarily different, their status was always the same. Thus, if the concept of an economic zone was accepted, within that zone some rights would be reserved for the coastal State while others would continue to be enjoyed by all States. But from the legal point of view all those rights would be "sovereign," whatever their practical importance for the States concerned. Such a division of rights had difficulties the solution of which required not only international rules, such as those in the single negotiating text, but also international machineries. Furthermore, the functional division would be different in different maritime zones and those zones would have to be delimited and divided both among States and among States and the international community, in particular the Authority. There again, the delimitation would be quite different from the delimitation of land, since there were no natural boundaries in the seas and the seas would never be the normal habitat of man. Nevertheless, for legal purposes, it was necessary to draw boundaries in the seas. The numerous provisions on the subject in the single negotiating text were and probably would remain rather vague, since it was virtually impossible to cover all existing geographical situations by abstract rules. There again, international machinery for reaching decisions in concrete situations was essential.

3. The new law of the sea convention provided for a completely new type of international organization, namely, the Authority. It was obvious that the Authority must be subject to international rules limiting its powers and regulating the legal relationships it entered into with other entities and, generally, its activities affecting the interests of other entities, whether States or natural or juridical persons. The traditional rules and procedures relating to the interpretation and application of the constitutions of existing international organizations and their contracts did not suffice. The Authority must be subject to some form of judicial control. Accordingly, compulsory dispute settlement was an essential element of any new legal order for the seas. The choice between the various possible methods of dispute settlement must also correspond to the specific character of the applicable rules and to the subject-matter of the particular dispute. Different procedures should therefore be envisaged, while seeking to avoid creating problems of positive or negative conflicts of competence between those procedures. Furthermore, the common principle underlying those procedures should be that ultimately a binding and final decision must be reached.

4. The system of dispute settlement would necessarily be complicated, since a simple, uniform solution would hardly do justice to the great variety of situations. Furthermore, care must be taken to admit a negotiated settlement at all times. In that connexion, the three delegations on whose behalf he was speaking favoured the idea underlying annex III, entitled "Information and consultation," of the single negotiating text submitted by the President of the Conference (A/CONF.62/WP.9). Should direct consultations and negotiations fail after a certain period of time, impartial third-party assistance should be accepted. Accordingly, a compulsory conciliation procedure along the lines of that provided for in the Vienna Convention on the Law of

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

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60th Plenary meeting

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Treaties[2] of 1969 should be provided for in the future convention for disputes to which no "special procedures" applied. Third-party assistance need not necessarily be directed towards a negotiated settlement of the dispute; in appropriate cases, it could be directed towards an agreed method of settling the dispute through fact-finding judicial interpretation.

5. If conciliation failed, there should be a compulsory dispute settlement procedure entailing a binding decision. It was at that stage that a differentiation in procedures according to the subject-matter of the dispute should be envisaged, as was the case in annexes II A (Fisheries), II B (Pollution) and II C (Scientific research) to document A/CONF.62/WP.9. Other special procedures would be required for other topics, such as disputes between an operator and the Authority, regarding the management of sea-bed resources in the international zone. Incidentally, where the issue was the validity of decisions taken by the Authority, there was bound to be a special procedure and prior negotiation or conciliation were obviously excluded.

6. For disputes to which no special procedures applied, a general procedure of compulsory judicial settlement should be provided for. The choice was between the International Court of Justice, a new permanent tribunal or arbitration. In that connexion, he recalled that in 1972 the International Court of Justice had adopted several important amendments to its rules of procedure. It was now possible for the parties to a dispute to have it settled by a chamber of the Court, the composition of which was determined in consultation with the parties. That new procedure gave greater flexibility to the Court and filled the gap between judicial settlement and arbitration.

7. It was the conviction of the delgations on whose behalf he was speaking, that undoubtedly no consensus on the choice of a particular body would be possible in the future convention. The choice should be left to each contracting party. A contracting party which did not make such a choice should be considered to have accepted the choice made by the contracting party with which it was involved in a dispute. Each contracting party should at least subject itself to one of the three general methods for the final settlement of disputes when no special procedures applied.

8. In any dispute the need for interim measures of protection might arise, particularly if it concerned law of the sea matters where interference with the movement of vessels and aircraft was involved. The competence to prescribe such measures should appertain to the tribunal which, in the final stage, was empowered to settle the dispute. That would present no problem if the International Court of Justice or the law of the sea tribunal was accepted by the parties. If a special procedure applied or the parties had accepted only the general procedure of arbitration, the need for interim measures of protection might arise before the tribunal was constituted. In such cases, another permanent judicial body should be competent to prescribe such measures pending the constitution of the tribunal, which in turn should be empowered to review the decision taken.

9. Under the general rules of international law no proceedings could be instituted before an international tribunal unless local remedies had been exhausted. That rule, which was a matter of dispute in the doctrine of international law, could be varied or done away with in a treaty. There were good practical reasons for that, if only to advance the speedy settlement of disputes. He recalled in that connexion that in many cases involving the application of the future convention, the rule of exhaustion of local remedies did not apply anyway and that there were many countries where national courts were not empowered to apply treaty rules and other rules of international law if their application was incompatible with the application of their national legislation. Nothing in the future convention should deny States parties to a dispute their right to decide by common agreement on any procedure for the settlement of their dispute other than those provided for in the convention. Nor was there any reason automatically to substitute the procedures in the convention for any previously agreed procedures between the States parties which entailed binding decisions.

10. The question whether entities other than sovereign States should be able to initiate one or more of the procedures provided for in the future convention was closely linked with the substantive rules which were yet to be negotiated. However, it could safely be assumed that there would be clauses in the convention giving rights to and imposing obligations on entities other than States, in particular the Authority and operators. Access of those entities to the dispute settlement procedures should in any case be allowed.

11. Lastly, the dispute settlement system of the convention should apply to all disputes relating to the interpretation or application of the convention. There was no justification for any of the exceptions mentioned in article 18 of the single negotiating text submitted by the President. That article was based to a large extent on confusion between the competence of a tribunal and the rules to be applied. It was obvious that a claimant had to allege that the defendant had exceeded his rights or had not fulfilled his obligations under the convention. If such an allegation were made, the applicable dispute settlement procedure should be followed and the question whether the allegation was well founded in law and in fact could hardly be "preliminary."

12. Particularly unjustified was the exception in article 18, paragraph 2 *(d)*, relating to "disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations." That provision was in clear contradiction to Article 36 of the Charter of the United Nations and it was open to the controversy about when the Security Council was actually exercising its functions. Furthermore, any of the permanent members of the Security Council, whether or not involved in the dispute, could through its veto power prevent the Security Council from determining proceedings under the future convention would not interfere with the exercise of its functions. If it was at all necessary to provide for the case in which the same dispute that was brought before the Security Council was at the same time the object of a dispute settlement procedure under the future convention, it should at least be required that the Security Council should decide that the procedure under the convention was in fact interfering with the exercise of the Council's functions, before the procedure provided for in the convention was discontinued. Indeed, the Security Council could take such a binding decision at any time, even in the absence of such a provision in the future convention, let alone any reservation of any State party to that convention, a reservation which in any event could affect only disputes in which that State was the defendant.

13. Mr. ZEA (Colombia) said that his delegation believed that document A/CONF.62/WP.9 could serve as a basis for negotiation, even though it did not agree with several of the provisions therein. The text should be studied in a forum to which all delegations had access, so that the work on it could be completed.

14. It was essential that the settlement of disputes should be an integral part of the new convention on the law of the

[2] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

sea. In view of the unsatisfactory results of the Conference on the Law of the Sea held at Geneva in 1958, that question should not be the subject of an additional instrument, protocol or annex. The only means of settling the countless possible disputes was to establish flexible machinery which would also be dynamic and effective, accepted by all and enshrined in the future convention.

15. It was for that reason that his delegation believed that the settlement of disputes which might arise in connexion with the application of the convention should be compulsory. The obligation to settle disputes by legal means was one of the pillars of the international policy of Colombia, which had not hesitated to accept the compulsory jurisdiction of the International Court of Justice. Any dispute should be subject to settlement which was compulsory both in form and in substance. To that end, his delegation therefore agreed that all types of consultation, negotiation and other procedures could be used, provided that they necessarily led to a definitive settlement. In addition, it believed that the principle of a specialized jurisdiction should be studied. The Conference should carefully study the proposal for the establishment of a tribunal convened specifically to consider disputes which might arise under the new convention. Uniformity of judicial decisions would result; furthermore, not only the States parties to the convention, but also the Authority, the international bodies established to study questions concerning the sea, and natural or juridical persons could be parties to a dispute concerning the application of the convention and have access to the said tribunal. Thus, the settlement of disputes would probably be accelerated.

16. His delegation believed that the parties to a dispute should have the possibility of choosing the peaceful means provided for under international law and enshrined, particularly, in Article 33 of the Charter of the United Nations. It continued to believe that, in cases involving a judicial settlement, the International Court of Justice was the pre-eminent international tribunal. It would be desirable to establish a chamber within the Court to deal with disputes concerning the sea and, in order to extend its jurisdiction so that entities other than Member States might have access to it, its Statute and, consequently, the Charter of the United Nations should be amended—as Colombia had been proposing for some time.

17. All parties to the convention should have access, for the settlement of their disputes, to the judicial bodies provided for in the convention, but none of them should be able to avoid the jurisdiction of those bodies if it was impossible to choose another means of peaceful settlement in agreement with the other party to the dispute.

18. It was for that reason that his delegation had serious objections with respect to article 18 on exceptions. Certainly any matter which manifestly affected the sovereignty of a State could not be contested before international tribunals. The relevant provisions of the convention would have to be precise lest pretexts be advanced to avoid recourse to the international tribunals and the rights of third States, recognized under the convention, be infringed.

19. His delegation would make the observations which it deemed appropriate during the consideration of the negotiating text article by article and it reserved the right to propose alternatives or additions to that text.

20. Mr. MARTIŃ HERRERO (Spain) said that, in order to serve as an instrument for peace and the development of peoples, the future convention on the law of the sea should provide a just and effective method for the settlement of disputes.

21. With respect to the activities carried out in the international zone of the sea-bed, his delegation believed that the features of the problems and their new character required a separate means of dispute settlement and, consequently, a special tribunal organically linked to the Authority but functioning quite independently. That tribunal should have certain features: it should be able to ensure that the rules laid down by the competent bodies of the Authority conformed to the provisions of the convention. It should also have the power to consider cases referred to it by natural or juridical persons which had concluded a contract with the Authority for the execution of activities in the zone.

22. With respect to the other questions dealt with in parts II and III of the single negotiating text (see A/CONF.62/WP.8), he wished to point out the importance of appropriate regulations concerning diplomatic means of settling disputes and, above all, of recourse to regional agencies and arrangements. It would be necessary to provide for recourse to a system of compulsory judicial settlement if those procedures did not lead to a settlement. The methods for the settlement of disputes provided for in Article 33 of the Charter of the United Nations should therefore simply be adapted to the requirements of the new law of the sea.

23. His delegation understood that, with the informal working group on settlement of disputes, two main concepts had emerged in that regard: the general method of settling disputes and the functional methods. The first assumed that judicial settlement was a starting-point or a position of principle. The advocates of functional methods supported the establishment, for each particular category of dispute, of a special means of settlement which would not necessarily always be judicial settlement. His delegation believed that the general method was most suitable, on the understanding that the number of cases that would be exempt from compulsory judicial settlement should be reduced to the minimum. Thus, compulsory judicial settlement should be applied not only to disputes between States which might arise in the zones beyond the limits of national jurisdiction, but also to disputes which might arise inside the zones situated within the limits of national jurisdiction. If compulsory international jurisdiction were to apply only to disputes arising within zones not subject to national jurisdiction, international judicial settlement would lose much of its justification. There already existed a special means of settling disputes within the international zone of the sea-bed. Since only the high seas would not come under national jurisdiction, only disputes arising in that zone would be subject to compulsory international jurisdiction.

24. With respect to the choice of the body responsible for the judicial settlement of disputes, the informal working group on settlement of disputes had envisaged the possibility of using the International Court of Justice, the Law of the Sea Tribunal or arbitral tribunals. His delegation believed that the International Court of Justice had successfully performed the function entrusted to it by the Charter of the United Nations. It did not therefore see why the International Court of Justice should not be the pre-eminent body responsible for the judicial settlement of disputes. It would then be unnecessary to establish special judicial bodies such as the law of the sea tribunal. Furthermore, it should be borne in mind that the simultaneous functioning of permanent judicial bodies could give rise to non-uniformity of jurisprudence. That danger could be avoided if, besides the International Court of Justice, special—in other words, non-permanent—judicial bodies were created, such as the arbitral tribunals which were constituted to hear specific cases. The preponderant role of the International Court of Justice should not preclude recourse to arbitration if the parties to a dispute so decided. Indeed, arbitration was a means of settling disputes that had proved satisfactory and

had existed alongside actual judicial settlement because it could be adapted to specific categories of dispute.

25. His delegation therefore proposed that recourse to the judicial settlement of disputes, once diplomatic means had been exhausted, should be defined in the future convention in terms similar to those in article 66, paragraph *(a)*, of the Vienna Convention on the Law of Treaties. The corresponding text could be worded as follows: "Any one of the parties to a dispute concerning the application or the interpretation of this Convention may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration."

26. Mr. LAI Ya-li (China) said that the discussion on the settlement of disputes was particularly important because it involved the sovereignty of all States. Currently the small and medium-sized States were struggling to defend State sovereignty and marine resources against maritime hegemonism. Those States firmly demanded the abolition of the old law of the sea, which served the interests of colonialism, imperialism and maritime hegemonism, and the establishment of a new law of the sea in keeping with current trends and giving expression to their legitimate interests and particularly to the interests of the developing countries. The super-Powers for their part, were trying by every possible means to weaken and restrict the legitimate rights of other countries and were clinging obstinately to their position of maritime hegemonism. To protect their vested interests they were capable of resorting to dispute setttlement procedures designed to weaken the provisions in the new law of the sea which reflected the interests of the third world countries and to restrict the sovereignty and jurisdiction of those countries over the sea areas within their own jurisdiction and their rights and interests in the areas beyond the limits of national jurisdiction.

27. The Chinese Government had consistently held that States should settle their disputes through negotiation and consultation on an equal footing and on the basis of mutual respect for sovereignty and territorial integrity. Of course, States were free to choose other peaceful means to settle their disputes. However, if a sovereign State were asked to accept unconditionally the compulsory jurisdiction of an international judicial organ, that would amount to placing that organ above the sovereign State, which was contrary to the principle of State sovereignty. Moreover, problems within the scope of the State sovereignty and exclusive jurisdiction of a sovereign State should be handled in accordance with its laws and regulations. That was why his delegation considered that the provisions in document A/CONF.62/WP.9 concerning the compulsory jurisdiction of the law of the sea tribunal were inappropriate.

28. Since the question of the settlement of disputes involved the sovereignty of all States, the procedures to be followed must be chosen by States themselves. If most States agreed to draft specific provisions on dispute settlement procedures, those provisions should not be included in the convention itself but should form a separate protocol so that countries could decide for themselves whether to accept it or not.

29. Mr. VARVESI (Italy) said that his country had always considered that the settlement of disputes was an integral part of international law. In its view, use should first be made of diplomatic means of solution and conciliation. Where those means failed, however, compulsory recourse to arbitration or judicial settlement constituted an indispensable guarantee of the security of international legal relationships.

30. The future convention would no doubt be very detailed and would include many new legal concepts. Many of its articles would embody compromise solutions resulting from negotiations which were frequently difficult. It was therefore important that the interpretation of the future convention should be entrusted to competent bodies.

31. A number of guiding principles should be followed. First, the dispute settlement machinery should form an integral part of the future convention and should not appear in an optional protocol. The rules concerning the settlement of disputes should be included in the same document as the substantive rules, so that States could not be bound by one set of rules only. Secondly, the dispute settlement machinery should be compulsory in the sense that States were obliged to submit to it and were bound by the decisions. Thirdly, the machinery in question should be as simple and practical as possible; it should make it impossible to avoid or delay the solution of disputes and should be suited to all possible types of dispute.

32. The application of those principles raised the awkward question of the use of the dispute settlement machinery and its structure. In principle, all exceptions to the application of the dispute settlement machinery, such as those envisaged in article 18 of document A/CONF.62/WP.9, were contrary to the very purpose of the system envisaged. That system should function for the application of all the rules of the future convention. It was inadmissable that any exception should be made to the principle of the sovereign equality of States, which would allow one party to impose on the others its interpretation of the rights and obligations it had freely accepted upon becoming party to the convention.

33. With regard to the dispute settlement procedures applicable in cases where diplomatic consultations and conciliation procedures failed, he noted that the document proposed a mixture of special and general procedures. The general procedures envisaged were arbitration and recourse to the International Court of Justice and the law of the sea tribunal. The powers of the Law of the Sea Tribunal, as envisaged in that text, differed from those of the International Court of Justice on only two points: the Tribunal would be open to individuals and companies, and it could function as a permanent body for supervision of the legitimacy of the rules and regulations of the Authority. It followed that the special power of the law of the sea tribunal only concerned questions regarding the exploration and exploitation of the sea-bed and the Authority.

34. In the light of the guiding principle that any dispute settlement machinery should be simple and practical, it was doubtful whether it was necessary to establish a law of the sea tribunal with general and special competence. That function could be carried out by the International Court of Justice or an arbitral tribunal. One reason why recourse to the International Court of Justice or an international tribunal seemed advisable was that there would no doubt be a considerable time lag between the signing of the convention and its entry into force. Even after its entry into force, the convention would probably not be binding on all States. It was therefore appropriate that the same bodies should settle both disputes which might arise between contracting parties concerning the interpretation of the convention and disputes which might arise between contracting parties and States which had not yet ratified the convention, or between States which had not yet ratified the convention, concerning rules of general international law as modified by the convention. Thus the competence of the law of the sea tribunal could be limited to a special procedure, concerning the exploration and exploitation of the sea-bed or questions relating to the Authority and to the rules and regulations it would establish. The tribunal would then no longer have the both general and special characteristics which seemed to be envisaged in document A/CONF.62/WP.9.

35. Although he recognized that the question of access to the law of the sea tribunal could not be settled before a solution had been found to certain substantive problems, he expressed the hope that natural and juridical persons would be permitted access to the tribunal. The Court of Justice of the European Communities and the International Centre for Settlement of Investment Disputes at Washington were very interesting examples of the usefulness of such a solution.

36. The law of the sea tribunal could be permanent, as proposed, but the Conference should not reject the idea of a panel of judges who could constitute a tribunal in the event of a dispute or the idea of a mixed system. In the latter case, the permanent tribunal would be competent only in cases where urgent measures had to be taken.

37. His delegation favoured special procedures adapted to particular problems. However, it was not in favour of the possibility of appeal from decisions taken as a result of special procedures. If the experts who participated in those special procedures were also legal experts, as envisaged in annex II A of the single negotiating text concerning fisheries, the possibility of appeal could be excluded. If recourse to that special procedure was limited to the establishment of the facts, legal questions could also be reserved for the general procedures.

38. Mr. RUIVO (Portugal) stressed the importance of ocean uses to Portugal, particularly in connexion with fisheries and navigation. It was essential to adopt rapidly a new ocean regime which would take into account the interests of countries and of the world community. However, the regime proposed in the convention under preparation was somewhat vague. Of course, considerable time was needed to reach agreement on the numerous and important issues under consideration and that agreement would depend in the end on the spirit of compromise displayed by the countries participating in the Conference. A revised text should therefore be ready by the end of the session. His delegation considered that formal negotiations should be initiated during the current year.

39. The provisions of the future Convention concerning the settlement of disputes should as far as possible provide details on the procedures and related mechanisms and should be based on the principle of the use of peaceful means as set forth in the Charter of the United Nations. They should also enshrine the concept of compulsory jurisdiction. Exceptions to that principle would depend on the final formulation of the rights and duties of States in the convention. His delegation was prepared to consider favourably the various mechanisms for the settlement of disputes. Although it considered it desirable to encourage direct negotiations, it accepted in principle arbitration procedures and special procedures for disputes concerning fisheries, pollution and scientific research, as well as the general procedures envisaged, including the possible establishment of a law of the sea tribunal. However, it reserved its position on that question.

40. Flexibility and the right of all States involved in a dispute to choose the procedure they wished to follow were principles which could help to reconcile positions. His delegation would return to that question in due course. It had difficulty in accepting the idea that entities other than States parties to the convention should be able to resort to the dispute settlement procedures envisaged in the convention.

41. While consensus could be expected to be achieved on many items and general principles, there seemed to be a considerable difference of opinion on detailed aspects, particularly on the exceptions covered by article 18 of document A/CONF.62/WP.9. His delegation believed that the Conference would of necessity have to arrive at a general compromise. Document A/CONF.62/WP.9, like the three parts of document A/CONF.62/WP.8 could serve as a basis for discussion. His delegation was ready to adopt a less elaborate set of provisions with a view to achieving a more rapid agreement. It shared the President's view that effective dispute settlement "would also be the guarantee that the substance and intention within the legislative language of a treaty will be interpreted both consistently and equitably" (A/CONF.62/WP.9/Add.1, para. 6). In that context, his delegation supported the view expressed by the representative of Sri Lanka at the previous meeting concerning a suggestion made at the 14th plenary meeting in Caracas by the Secretary-General. The Secretary-General had stated that it would be advisable to consider the possibility of organizing a periodic assembly of the parties to the convention to review the problems and develop ways to meet any difficulties produced by new uses of the seas. Such a measure would no doubt promote co-operation among the contracting parties in the effective implementation of the convention. The assembly might meet every three years, on the understanding that it should not be involved in the revision of the convention. The assembly could provide a forum for the development of new ideas which in some cases could contribute to the settlement of issues which had not been afforded sufficiently detailed solutions in the convention.

42. In the opinion of his delegation, it would not be necessary to establish any new permanent machinery, but it would probably be desirable to request an *ad hoc* intergovernmental committee, adequately representative of different tendencies and reflecting an equitable geographical distribution, to assist with the planning and preparation of the assemblies. The *ad hoc* committee could be serviced by the Secretariat of the United Nations, with the active co-operation of the competent United Nations bodies, such as those mentioned in document A/CONF.62/WP.9. Such an approach would facilitate the rational use of staff, facilities and resources to avoid duplication among those agencies and would also facilitate concerted action in matters of common interest. He hoped that the Conference would give serious consideration to the suggestion made in Caracas by the Secretary-General since it would go a long way towards preventing and even resolving difficulties and pave the way for the establishment and consolidation of international institutional arrangements essential to the harmonious and uniform implementation of the convention.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

43. Mr. JACOVIDES (Cyprus) said that his delegation was in favour of an effective, comprehensive, expeditious and viable dispute settlement system entailing a binding decision regarding all disputes arising out of the substantive provisions of the convention and believed that such a system should form an integral part of the convention.

44. That position was dictated both by his country's attachment to the general principle of equal justice under the law and by national self-interest, since Cyprus was a small and militarily weak State which needed the protection of the law, impartially and effectively administered, in order to safeguard its legitimate rights. There was a danger that the substantive articles which the Conference was attempting to formulate might be interpreted arbitrarily and applied unilaterally. It was to be feared that disputes would multiply or that the whole system would disintegrate amid complete anarchy. Should that happen, it was the smaller and weaker States which stood to lose the most. The existence of a legal régime arrived at with the participation and consent of all States could not fail to benefit all members of the international community, large and small. A third-party dispute settlement system, capable of providing solutions to disputes on the basis of objective and, to the extent possible, predictable lines was therefore essential.

45. His delegation considered that such a system, far from being incompatible with national sovereignty, could only further the effective exercise of the sovereignty of the weaker States by preventing the stronger States from imposing their will. Participation in any collective effort of that nature naturally demanded self-imposed restrictions on the part of States—as was the case when they became Members of the United Nations—but that was a very small price to pay considering that the alternatives were anarchy and the law of the jungle.

46. Referring to the single negotiating text presented by the President (A/CONF.62/WP.9), he said that the author had made a serious effort to deal in a constructive and comprehensive manner with the complex subject under discussion, and that his delegation was prepared to regard the document as a basis for negotiation. Depending on the outcome of the debate, the document could be considered in detail in a representative body, possibly a working group of the whole presided over by the President of the Conference. The document would thus acquire a status equivalent to that of the other parts of the single negotiating text. The text presented by the President was based on the right premises and contained the essential elements required for an acceptable solution to the question of third-party dispute settlement. However, while his delegation was in principle favourably disposed towards the text, it reserved the right to examine its provisions in detail and to analyse them more closely, as it had done with the other negotiating texts before the Conference. The document in question should be examined systematically, article by article, at meetings at which all the participants in the Conference would be represented, after all the various interested groups had had a chance to formulate and express their positions. He took the opportunity to pay a tribute to the members of the informal working group on dispute settlement. His delegation had participated in the work of that group, which had done a great deal to pave the way for the current discussion.

47. His delegation preferred a general rather than a functional approach to the settlement of disputes arising under the convention. The law of the sea tribunal, as envisaged in the text by the President, should be established and should be given the central role in the system. The Tribunal, so constituted and elected as to enjoy wide confidence, was the appropriate body to adjudicate, in the final analysis, in matters concerning the new law of the sea. Uniform interpretation and application of the convention would thereby be ensured. At the same time, his delegation saw no difficulty in allowing the possibility of recourse to other bodies (the International Court of Justice or *ad hoc* arbitral tribunals), provided that both parties to a given dispute had exercised the same option. In order to ensure wider acceptability of the dispute settlement machinery, his Government was also prepared to consider the possibility of supplementing the general procedure by special procedures applicable in specific areas, such as disputes concerning fisheries, pollution and scientific research.

48. Assuming the dominant position of the law of the sea tribunal in the over-all scheme, it might be appropriate for the tribunal to operate through two chambers, one dealing exclusively with sea-bed matters, so as to satisfy what was envisaged in the First Committee's single negotiating text (see A/CONF.62/WP.8), the other exercising general jurisdiction arising out of the convention as a whole. Such an approach might go a long way towards facilitating the solution of the thorny question of whether only States could appear before a tribunal or whether international organizations and natural or juridical persons could also do so. Moreover, it would then become unnecessary to set up two new permanent bodies for the settlement of disputes relating to the law of the sea.

49. His delegation was not in favour of allowing any exceptions or reservations to the compulsory dispute settlement procedure. If, after further debate and detailed examination of the matter, it was found that some exceptions had to be permitted in order to secure wider acceptability, such exceptions should be kept to the minimum. More specifically, his delegation was opposed to any exception regarding matters of delimitation of the maritime zones—whether the territorial sea, the contiguous zone, the exclusive economic zone or the continental shelf—between opposite States. Such matters clearly lent themselves to third-party settlement, as they were likely to cause disputes which might escalate into political, economic or even military confrontation. Under such circumstances, small and weak States would be left at the mercy of arbitrary interpretations and unilateral measures by States strong enough to impose their will. That would be especially true if the criteria for such delimitation were not based on definite legal rules, such as the "median line", but on such vague notions as "equitable principles" or "special circumstances", which lent themselves to subjective interpretation. If the latter type of criteria were accepted, the need for third-party adjudication would become even more imperative.

50. He pointed out that during the general debate at the second session in Caracas he had stressed the need to give serious consideration to the opportunities for change offered by the Conference without risking the creation of a chaotic situation. The proper balance could be struck by adopting the new approach required by technological advances and the political and economic changes of the times while at the same time not throwing overboard those positive rules of the international law of the sea which had stood the test of time, bearing in mind the principles of the Charter of the United Nations, which was the mainstay of modern international law. His delegation was gratified to note that now, nearly two years later, the Conference had made considerable progress towards adopting substantive rules in accordance with those basic tenets. It was his delegation's sincere hope that the same could also be said of the other corner-stone of the current undertaking, namely, an effective legal system for the settlement of disputes. If that could be achieved, both the rule of law among nations and the international community as a whole would stand to gain.

Mr. Mukuna Kabongo (Zaire), Vice-President, took the Chair.

51. Mr. SAMPONG SUCHARITKUL (Thailand) pointed out that, since the late nineteenth century, Thailand had signed a number of treaties on arbitration and the peaceful settlement of disputes, and that, after the Second World War, Thailand had become a Member of the United Nations and a party to the Statute of the International Court of Justice. It had, therefore, always maintained an open-minded and flexible attitude during the negotiations on the settlements of disputes which might arise under the future convention.

52. So far, the world had witnessed a progressive development not only of substantive international law but also of adjective law, namely, the international machinery designed to dispense international justice. There was already a wide variety of procedures available for the pacific settlement of disputes, apart from those enumerated in Article 33 of the Charter of the United Nations. National and regional procedures and, at the international level, the Permanent Court of Arbitration and the International Court of Justice deserved special mention. Nevertheless, new procedures and new machinery were being studied so as to encourge speedier adjudication in more specialized fields, such as the law of the sea, pollution, scientific research and so forth. The new procedures envisaged in the present draft convention, both

the general system and the special procedures, could not be intended to exclude the traditional tribunals from exercising their jurisdiction. The new procedures were designed to provide additional facilities and did not in any way conflict with existing régimes of judicial and arbitral settlement. It was essential to endeavour to provide as many and as effective means as possible for the settlement of disputes. To that end, it would be helpful to observe a number of fundamental principles or guidelines. First, flexibility was essential in order to achieve a balanced solution, which was vital to the successful conclusion of a Conference of such magnitude. Secondly, the choice of methods or procedures for the settlement of disputes should be made by the parties themselves, especially when proceedings were to be instituted against States. The consent of States was still the basis of international adjudication, although there were several ways of indicating such consent. Thirdly, no attempt should be made to lay down a strict hierarchy among the various methods and procedures available, the selection of which should also be at the option of the parties. Fourthly, the special procedures should be streamlined so as to avoid an excessive number of concurrent specialized jurisdictions and to ensure a practical division of labour without totally eliminating the possibility of some overlapping. Fifthly, in view of the independence of each system or procedure, appellate jurisdiction was difficult to justify; however, the possibility of reviewing certain cases within the same or allied systems should not be precluded. Sixthly, concurrence of jurisdiction, rather than conflict, would, in fact, operate to improve the quality of adjudication. As parties were likely to use the procedures most attractive to them, each system would strive to inspire the confidence of States. Seventhly, acceptance by States of the different procedures for the settlement of disputes could be further encouraged and facilitated if States could be assured that the law to be applied by the tribunals would not only be just and equitable but would also take into account the interests of countries which had taken little or no part in the development of traditional international law. Eighthly, the draft convention should aim at the widest possible acceptance and participation by States. It should not in any way seek to impose on unwilling States any new procedure or a choice of available jurisdictions or procedures. Although the consent of States was a sound basis for jurisdiction, there appeared to be no need to secure the approval of parties to the dispute in order to appoint members of a given tribunal. Ninthly, in order to facilitate wider acceptance and participation, States should be accorded the possibility of making exceptions or reservations with regard to the nature of the disputes, as well as with regard to parties to the disputes. Such exceptions or reservations should not, however, render illusory or arbitrary the general obligation to settle disputes. Tenthly, since the settlement of a dispute was a matter between the States concerned alone, the choice of procedures or jurisdiction should be made by the States themselves. Eleventhly, the Conference should strive for moderation and be guided by practical considerations in its efforts to find alternative solutions to the delicate problem of dispute settlement. Lastly, he believed that work could be expedited by the adoption of a single negotiating text, which could serve as a basis for future negotiations.

53. His delegation reserved the right to make further observations regarding specific parts of the draft convention at an appropriate time.

54. Mr. FUJISAKI (Japan) said that, in his delegation's view, the establishment of machinery for the settlement of disputes relating to the interpretation and application of the new convention on the law of the sea was no less important than the elaboration of the substantive articles of the convention. Agreement on a compulsory dispute settlement procedure must be an essential element in an over-all solution of major issues in the current negotiations. That was all the more necessary since the new legal instrument would have to strike a delicate balance between the rights, obligations and interests of States within the framework of a wider jurisdiction of coastal States than had previously been recognized. His delegation therefore had certain apprehensions that disputes might arise more frequently than had been the case in the past.

55. His delegation wished to emphasize that the general obligation of States to settle their disputes by peaceful means and their right to choose their own methods should be recognized and respected as having equal validity and strength in the field of the law of the sea as in all other fields of international law. Thus, his delegation could support articles 1 to 5 of document A/CONF.62/WP.9 which incorporated that principle. Moreover, when an agreement existed between parties to a dispute whereby they had assumed an obligation to settle any given dispute by recourse to a particular method, that agreement should have precedence over the procedures agreed upon in the new Convention. Article 3 and the explanations given in paragraphs 12 and 13 of the memorandum by the President (A/CONF.62/WP.9Add.1) were of special relevance in that regard.

56. His delegation also wished to emphasize the necessity of making the general obligation to settle disputes an integral part of the future convention. In his delegation's view, the solution adopted at the First United Nations Conference on the Law of the Sea in 1958, in the form of an Optional Protocol of Signature, was insufficient and unacceptable.

57. The question of excepting certain matters from the obligation to settle a dispute, which was dealt with in article 18 of document A/CONF.62/WP.9, was related to the question of the acceptance of compulsory settlement of disputes. Without going into details, he wished to state that his delegation could not agree to such exceptions because they undermined the principle of the compulsory settlement of disputes. On that point his delegation fully shared the views expressed at the previous meeting by the delegation of the Federal Republic of Germany.

58. From the practical standpoint, his delegation favoured the functional approach, which envisaged special procedures for the settlement of various categories of disputes. The scope of the law of the sea was very broad; it would therefore seem appropriate to establish several organs, each with a specific field of responsibility (questions of the sea-bed, fisheries, pollution and the like). In order to ensure the speedy settlement of disputes, those organs should be empowered to take final and binding decisions and should be constituted on a permanent basis. By expressing support for the functional approach, his delegation did not mean to exclude a general system for the settlement of disputes. There might well be instances in which the International Court of Justice, as the principal judicial organ of the United Nations, could play an important role. His delegation was unable to support the establishment of the proposed law of the sea tribunal because there was every likelihood that the problems which would arise under the law of the sea régime could be solved by the existing judicial system. Moreover, the establishment of a new tribunal would give rise to duplication and to conflicts of competence between it and the International Court of Justice.

59. In conclusion, he expressed the hope that the question would be dealt with more comprehensively and perhaps more formally than in the past, in view of the importance that many delegations attached to it.

60. Mr. WOLF (Austria) said that, from the very beginning

of the Conference, his delegation had consistently underlined the importance which it attached to establishing machinery for the peaceful settlement of disputes. The rule set forth in Article 33 of the Charter of the United Nations served as the basis for and was a necessary prerequisite of the international system. Since States had conflicting interests, it was essential to have machinery for the settlement of disputes, culminating in a body with judicial powers, so as to ensure the effective application of international law and the protection of the interests of States according to the existing legal régime.

61. So far as the law of the sea was concerned, only dispute settlement machinery would guarantee that the results of the long negotiations in progress would be converted into international law and spelt out by an international judicial body. Such a body would be particularly helpful in the case of States for which recourse to the settlement procedure represented the only means of asserting their rights. His delegation believed that the future convention must embody a dispute settlement system based on compulsory jurisdiction. That was the only means of ensuring uniform interpretation of the provisions and avoiding fragmentation of jurisdiction.

62. As to the form of that machinery, his delegation was in general in favour of a single judicial institution. Owing to the divergent structure of the different parts of the future convention, as they appeared in the single negotiating text, it was undoubtedly necessary to make the machinery flexible. Flexibility, resulting in a limited functional approach, was necessary in respect of access to the Court and the problem of the applicable law. First of all, it would be necessary to provide for a special system in respect of disputes which might arise in connexion with part I of the single negotiating text (see A/CONF.62/WP.8), but other special features, too, would have to be taken into account; at the same time, there was a need to simplify and speed up procedures in order to stimulate recourse to the system. At the beginning of the session, the President had presented in document A/CONF.62/WP.9, part IV of the single negotiating text, which reflected the President's own ideas on the dispute settlement machinery. His delegation appreciated the obvious endeavour to comply in that text with all the demands put forward by States, even if the complexities of the future law of the sea were not taken fully into account. It feared that the "Montreux formula" would give rise to various difficulties and problems, thereby impeding the functioning of the legal system eventually adopted. Moreover, it was hardly acceptable that States should be prevented from having recourse to the judicial machinery in respect of matters which were regulated by international law or even by the convention itself. The example that sprang to mind was the economic zone, the provisions on which ranked first among the exceptions to compulsory jurisdiction. As the economic zone was a new legal institution and had to be defined explicitly in the convention, interpretations concerning it could hardly be left to the discretion of coastal States but should rather be spelt out by an international judicial body. To enble that body to discharge its functions, it would be necessary to incorporate the chapter on the settlement of disputes in the convention itself rather than in an optional protocol, for experience demonstrated that only a few States would become parties to the optional protocol, while the majority would refrain from ratifying it.

63. Lastly, it would also be necessary to decide whether the International Court of Justice itself should be entrusted with the task of adjudicating law of the sea disputes or whether an independent law of the sea tribunal should be instituted. His delegation was prepared to listen to any suggestions in an attempt to find a solution which would take all aspects of the matter into account. Various possibilities had already been put forward, apart from the two solutions that he had mentioned.

64. His delegation reserved the right to speak later in the debate on the future procedure for drafting of the articles on the settlement of disputes.

Mr. Driss (Tunisia), Vice-President took the Chair.

65. Mr. ANDERSEN (Iceland) said that although it was difficult to take a definitive position on the question of settlement of disputes before the articles of the convention had taken final shape, some preliminary opinion was now clearly needed. The document presented by the President was therefore very helpful. It was obvious that a dispute settlement mechanism would be required, since the application of the convention would inevitably give rise to conflict in many fields. However, a fundamental consideration was to ensure from the outset that every effort had been made to minimize the possibility of disputes. It was therefore imperative to make the substantive provisions of the convention crystal-clear.

66. The future convention should be constructed on five main pillars: a territorial sea of up to 12 miles; unimpeded transit through straits; the delimitation of the continental shelf; an exclusive economic zone of up to 200 miles; and a régime for the international sea-bed area. At the present stage of the debate his delegation would deal only with the question of the settlement of disputes relating to the exclusive economic zone. His delegation saw that as a realistic economic resource zone in which the coastal State had sovereign rights over the living and non-living resources. So far as the living resources were concerned, the convention should determine that the surplus, i.e. that part of the allowable catch which the coastal State did not have the capacity to utilize, would be made available to other States on the basis of special agreements. Those provisions should be made crystal-clear in order to avoid any misunderstanding.

67. Yet many States, although professing to support the concept of the economic zone, were endeavouring in various ways to weaken it. They wanted to open up the possibility of disputing the decisions of the coastal State, and there could be no doubt that conflicts might arise if the provisions of the convention were not sufficiently explicit, particularly in connexion with decisions concerning conservation standards, the size of the total allowable catch, the coastal State's capacity to utilize the stocks and similar matters. If that were to happen, the concept of the exclusive economic zone would be rendered illusory and meaningless, notwithstanding the fact that it represented a vital element of the package solution on which the future convention must be based. Consequently, the decisions of the coastal State with regard to the resources within the exclusive economic zone must be considered final. That was why, if unnecessary disputes were to be avoided, the provisions of the convention must be spelt out with total clarity at the present stage.

68. Mr. Chang-Choon LEE (Republic of Korea) felt that document A/CONF.62/WP.9 should serve as the basis for discussion with a view to establishing dispute settlement procedures. Compulsory settlement procedures involving a third party were indispensable not only to the stabilization of the new international economic order but also to the maintenance of international peace and security. His delegation unreservedly adhered to the principles embodied in Articles 2 and 33 of the Charter of the United Nations, under which Members were required to settle their disputes by peaceful means—principles which the Republic of Korea had always faithfully respected.

69. An effective system for the compulsory settlement of disputes would clearly provide safeguards against the occurrence of disputes and would permit uniformity of interpretation and application of the future convention. The single negotiating text struck a balance between the scope and nature of national and of international jurisdiction. Such

a system would also be a special guarantee of the rights and interests of small States. In his delegation's view, however, the Conference should consider establishing a special consultant group consisting of a limited number of experts, or an open-ended informal working group, in order to assist the President in carrying out his function, in view of the complexity and special nature of the issue involved.

70. His delegation favoured a comprehensive system which incorporated both general and special procedures, as envisaged in document A/CONF.62/WP.9. Without minimizing the importance of special procedures, his delegation believed that the principle of the compulsory settlement of disputes should find its place in the convention and it therefore favoured the creation of a law of the sea tribunal. The scope and complexity of the problems involved in that field, particularly if one took into consideration the revolutionary trends in development and the parallel evolution of law, required the establishment of a new tribunal and the elaboration of appropriate procedures.

71. His delegation felt that the provisions for the settlement of disputes contained in part I of the single negotiating text (see A/CONF.62/WP.8) could be amalgamated with those submitted in document A/CONF.62/WP.9, it being understood that disputes relating to the sea-bed would be covered by the general procedures set forth in the latter. His delegation accordingly favoured the preparation of a single text concerning the settlement of disputes, which would constitute a separate part of the convention.

72. At the same time, it took the view that the right of access to dispute settlement procedures should also be granted to natural and juridical persons and to international organizations, taking into account the special character of the emerging sea-bed régime, as well as the particular needs of the new law of the sea, such as the need for the prompt release of detained vessels.

73. With regard to article 18 of document A/CONF.62/WP.9, his delegation believed that the exceptions provided for therein applied to nearly all important disputes and therefore seemed to defeat the whole purpose of the settlement procedures envisaged. When exceptions were allowed in a treaty extreme care must be exercised. In that connexion, he drew attention to article 19 of the Vienna Convention on the Law of Treaties of 1969 concerning the question of reservations. Bearing in mind that, in international law, States had the capacity to make exceptions to a treaty, it did not seem necessary to make express provision for exceptions in the case of compulsory dispute settlement procedures, since exceptions, exclusions, limitations and other reservations which the parties to the convention might wish to make could be made in the established manner.

74. Mr. KARASIMEONOV (Bulgaria) said that the provision of effective dispute settlement procedures was essential for stabilizing the complex structure of which the convention on the law of the sea would be capstone. He felt that the text submitted by the President was a useful working tool and that the proposed provisions should be grouped together in a special part of the convention in keeping with the approach adopted by the Chairmen of the Second and Third Committees.

75. Articles 1-4 of that text dealt with the general obligation of States to settle disputes by peaceful means, in accordance with the principles of the Charter of the United Nations. They would offer the parties the possibility of choosing among the different methods of peaceful settlement of disputes available to them. Those articles were acceptable to his delegation as they stood.

76. In general, his delegation favoured a system of special procedures, which was gaining increasing support from delegations. It supported the special procedures for the settlement of disputes in the field of fisheries, pollution and scientific research proposed in annex II to the single negotiating text. It also favoured a special procedure of either arbitral or judicial character in the case of disputes concerning the sea-bed. Furthermore, it had no objection to the adoption of special procedures for certain other matters. Since one of the reasons for such procedures was the need for an expeditious settlement, his delegation agreed with the French delegation regarding the possibility of establishing a special procedure for disputes relating to navigation, especially with regard to the detention of vessels.

77. If the principle of special procedures was to be eventually accepted, the question arose whether a general system would be necessary at all. His delegation felt, however, that a general system would make it possible to settle disputes arising from the interpretation and application of the convention. In that connexion, it believed that the existing institutions were adequate and that it was in the interest of the international community to strengthen the role of the International Court of Justice instead of establishing a new tribunal with similar functions.

78. As to the question of the choice of procedure, his delegation took the view that the choice should be left to the parties to the dispute, but it opposed giving a central role to any one of the procedures. In that connexion it would prefer the so-called Montreux formula. States could also have the possibility of making a declaration in the instrument of ratification concerning their acceptance of a special procedure. In the absence of such a declaration, it should be assumed that the State concerned preferred to be bound by the general system.

79. His delegation felt that the right of access to the proposed settlement procedures should be accorded only to States and not to natural and juridical persons. Such persons should, in the event of a dispute concerning them, present their claims through the State whose nationals they were. As to the settlement of disputes arising from the exploitation of the sea-bed in the international area, provisions could be embodied in the contracts concluded with the Authority.

80. Article 18, which dealt with exclusions and exceptions, raised a very complex question because it touched upon the delicate balance with regard to activities concerning the economic zone. His delegation had declared that it approved of clearly defining the rights of a coastal State for the purpose of exploring and exploiting the natural resources of the economic zone. It was therefore ready to accept reasonable exceptions to the dispute settlement procedures. Nevertheless, it could not agree with the exclusion from those procedures of disputes arising out of the exercise of discretionary rights by a coastal State. Exclusion of all disputes arising in areas where a coastal State had some clearly defined rights would leave other States without any possibility of protecting the rights legitimately granted to them in those areas by the convention. On the other hand, his delegation could agree that States should be given the possibility of declaring that they did not accept the dispute settlement procedures concerning boundary delimitations and other matters referred to in article 18, paragraph 2 *(b)* and *(c)*. With regard to paragraph 2 *(d)*, under which parties could exclude disputes in respect of which the Security Council was exercising the functions assigned to it by the Charter of the United Nations, his delegation, while accepting the idea in principle, took the view that it had no place in article 18; rather, it should be made the subject of an independent provision.

The meeting rose at 1.05 p.m.

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.61

61st Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

61st meeting

Tuesday, 6 April 1976, at 3.30 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add.1)

1. Mr. LARSSON (Sweden) said that Sweden was firmly attached to the principle of the peaceful settlement of disputes. The creation of an effective system for the settlement of disputes arising out of a convention on the law of sea should be regarded as one of the pillars of the new world order in ocean space. A system ensuring expeditious, impartial and binding decisions was a necessary complement to any rules codifying international law. A State should not itself be the sole interpreter of such rules, and failure to take account of the need for their uniform interpretation and application could destroy delicate compromises which had been carefully negotiated so as to offer balanced protection to competing rights and interests. His Government considered that the single negotiating text on the subject (A/CONF.62/WP.9 and Add.1 and Corr.1 and 2) was an appropriate basis for further deliberations by the Conference.

2. His Government believed that a system of compulsory settlement of disputes leading to a binding decision on the basis of law should be included in the convention; it did not think that such a system was inconsistent with State sovereignty as its recognition of the compulsory jurisdiction of the International Court of Justice demonstrated. States should agree in advance to accept the jurisdiction of an international forum, so as to ensure the uniform interpretation and application of the future convention. The mechanism for the settlement of disputes should, however, be flexible enough to include a wide choice of methods of settlement. Parties should be free to decide by mutual agreement to utilize any of the methods referred to in Article 33 of the Charter of the United Nations, and, if they failed to agree on any of them, each party should be entitled to refer the dispute to compulsory settlement. That procedure was one way of balancing the rights of coastal States and the rights of other States, and it would also prevent States from being subjected to, for instance, political or economic pressures from other States.

3. The issue of whether there should be compulsory procedures for all issues or for only a limited category of cases was closely related to the question of whether reservations to the procedure for the settlement of disputes should be permitted. The future work of the Conference would show whether provision should be made for reservations, but they should in any event be allowed only on specific points and for specified reasons. The provisions on reservations so far submitted vitiated the rules on the settlement of disputes.

4. His Government considered it essential that the system for the settlement of disputes should be an integral part of the new convention; if the procedures were relegated to an optional protocol, the Conference might appear to have rejected the idea of compulsory settlement procedures. It also believed that the system had to be such as to ensure a wide measure of uniformity in the interpretation and application of the convention. The general use of, for instance, special settlement procedures for disputes arising out of individual chapters of the convention would be unsatisfactory and inefficient, although such procedures might be warranted in one or two specific fields. Moreover, the greatest possible use should be made of the International Court of Justice.

5. Nevertheless, his Government acknowledged the need for the establishment of a judicial organ within the framework of the convention. The judicial arm of the International Sea-bed Authority should, however, be independent of the Authority itself, and its jurisdiction, powers and functions should be clearly defined in the convention. On the assumption that the International Court of Justice would play an important role under the new convention, the jurisdiction of the proposed tribunal should be limited to three categories of disputes: disputes concerning prospecting and exploration of the sea-bed and the exploitation of its resources, those concerning the interpretation and application of the Authority's rules and regulations and those concerning the legality of measures taken by an organ of the Authority. The tribunal should be available to States and the Authority itself, as well as to natural and juridical persons. Those arrangements would leave all matters concerning interpretation and application of the convention to be dealt with by the International Court of Justice; to the extent that such disputes involved individual persons, natural or juridical, they would, in accordance with prevailing international law, have to rely on the protection of their home States.

6. The Conference should avoid creating a plurality of jurisprudence and, to the extent possible, should provide for the use of existing measures for the settlement of disputes. That was the only way to ensure uniform interpretation and application of the new convention.

Mr. Appleton (Trinidad and Tobago), Vice-President, took the Chair.

7. Mr. GÜNEY (Turkey) said that his delegation believed that provisions concerning the settlement of disputes should be based on the future convention on the law of the sea adopted by the greatest possible number of States. Accordingly, agreement on matters of substance should be achieved first, and thereafter provision should be made for suitable and flexible methods of settling disputes, so as to ensure that the spirit and letter of the provisions of the new convention would be interpreted with uniformity and equity.

8. In his delegation's view, the general obligation of States to settle all disputes peacefully by means of the various methods set forth in Article 33 of the Charter of the United Nations should be maintained and no priority should be accorded to any one in particular so as to respect the competence of States to select the most appropriate means. Special procedures of a functional nature should also be envisaged that would be applicable to specific types of dispute such as those concerning fishing, pollution and scientific research. A functional approach and special procedures might also be considered that would be applicable to sea-bed areas beyond the limits of national jurisdiction and to cases involving contracts for operations in the international area.

9. Turkey had always favoured a compulsory jurisdiction for the settlement of international disputes. It had to be admitted, however, that, as matters stood, States were unwilling to accept binding international jurisdiction, or to

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

submit disputes to regional settlement. Only one third of the States which were parties to the Statute of the International Court of Justice had accepted its compulsory jurisdiction, and in none of the treaties adopted at conferences held during the previous decade was its jurisdiction made compulsory, except in one instance of two articles affecting *jus cogens*. The Conference therefore had no option but to establish procedures which would enable States to choose freely the means of settling their disputes, in accordance with the Charter, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[2] and paragraph 15 of the Declaration of Principles governing the Sea-bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction.[3] The history of relations between States showed that the most common means of settling international disputes was negotiation, particularly meaningful negotiation, and that had been recognized by the International Court of Justice in the judgement concerning the North Sea continental shelf.[4]

10. In establishing machinery for the settlement of disputes arising from the new convention, the Conference should avoid creating new judicial bodies and should make use of existing organs, increasing their authority, if appropriate; consideration might be given to forming, as provided in article 26 of the Statute of the International Court of Justice, chambers to deal with particular categories of cases. Existing regional organs or agreements should be utilized, and States should be urged to provide for the settlement of disputes on a bilateral and regional basis whenever they concluded new agreements or amended existing ones. Finally, the machinery for the settlement of disputes arising from the new convention should be simple, practical and rapid.

11. In short, the best solution for the Conference was probably to agree on an optional clause relating to the jurisdiction of the International Court of Justice, as the court of final appeal in the settlement of disputes. That must constitute the foundation, the starting-point and also the keynote of any kind of mechanism for the settling of disputes which might arise from the future convention on the law of the sea, and it would ensure that judicial settlement procedures were not imposed on States which they had not specifically accepted or which were sometimes even rejected in existing treaties. His delegation had no objection to the provision of such special procedures for specific technical questions such as fishing, pollution and scientific research, or of procedures applicable to disputes concerning the international area and contracts for operations in that area of the sea-bed. The list of exceptions, that would include the points not to be subject to compulsory settlement procedures and those special procedures which were being considered for specific kinds of dispute and for the international area, should be as comprehensive as possible. Any approach that did not take advantage of existing experience was doomed to failure. In the view of his delegation, only States and the International Sea-bed Authority should have the right to resort to dispute settlement procedures, the interests of all other parties should be looked after by the State or States of which they were nationals.

12. On the question of whether the President should prepare an informal single negotiating text on the settlement of disputes, his delegation considered that such action would be premature. The final provisions of the convention or conventions had not yet been agreed upon, and the machinery for the settlement of disputes would have to be modelled on the final text. Furthermore, the subject should first be considered by each of the three Committees to the extent that it related to their terms of reference. An *ad hoc* committee to review the text prepared by the informal working group might be set up, in due course, if necessary.

13. Mr. MAZILU (Romania) said that his delegation agreed that the settlement of disputes arising out of the new convention should be based on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It was essential that disputes should be settled by the peaceful means mentioned in Article 33 of the Charter. Rules should therefore be established which would enable disputes to be settled in accordance with the goals and sovereign interests of all States.

14. The Conference should ensure that the procedures embodied in the system for the settlement of disputes associated with the new convention complemented those already in existence; the system should, however, be flexible enough to allow advantage to be taken of future improvements in arbitral and judicial procedures. All States, on the basis of full equality of rights, should have access to the procedures agreed upon. His delegation believed that the State alone, by virtue of its rights and obligations, could be a party to the settlement of any dispute which might arise.

15. In the settlement of disputes, the emphasis should be on negotiation in good faith by both parties, on the basis of the principle of equity, and the parties allow a reasonable period to elapse before resorting to settlement procedures. States should mutually agree on the procedures to be chosen for the settlement of their disputes. Legal arbitration should be resorted to only on the basis of each State's consent in the case of each individual dispute.

16. His delegation believed that the provisions regarding the compulsory settlement of disputes should be incorporated in an optional protocol to the convention, in accordance with past practice. That would enable a larger number of States to support the new convention. Finally, his delegation felt that the negotiations on the settlement of disputes should continue with the participation of all interested States.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

17. Mr. LEARSON (United States of America) said that his delegation's views on the need for effective dispute-settlement procedures, as an integral part of an over-all settlement, were well known. His delegation believed that the single negotiating text prepared by the President should be used as a starting-point for negotiations, although it had substantive problems with that text.

18. A comprehensive system for third-party settlement of disputes was an indispensable part of the future convention. The system should apply to all parties and all parts of the convention, the settlement process should be impartial and swift and the decisions should be binding. Procedures for reaching a settlement should be simple and the cost should not be burdensome for either the parties involved or the international community. While the dispute settlement system should extend to all parts of the convention, it would be necessary to provide for certain limited exceptions, which should be defined carefully and as restrictively as possible. His delegation was not prepared to exclude the economic zone from the settlement procedures.

19. His delegation had consistently stated that a properly constituted law of the sea tribunal would be an effective organ for producing rapid and uniform solutions to disputes and that such a tribunal would contribute to coherent and

[2] General Assembly resolution 2625 (XXV).

[3] General Assembly resolution 2749 (XXV).

[4] *North Sea Continental Shelf, Judgment, I.C.J. Reports, 1969,* p. 3

uniform interpretation of the convention. However, it was prepared to consider alternatives that would give parties more freedom of choice among means of binding settlement. Certain types of dispute might require specialized procedures—which were entirely compatible with a comprehensive system—and they should be carefully developed as part of that system. The proposed special sea-bed tribunal was an example.

20. On the question of which parties should have access to the dispute system, his delegation favoured a pragmatic approach. It believed, for example, that the owner or operator of a detained vessel should be permitted to seek directly prompt release of the vessel through summary procedures set forth in the convention.

21. Mr. PERIŠIĆ (Yugoslavia) said that procedures for the settlement of disputes would necessarily be a cornerstone of the agreement being negotiated by the Conference. In public international law the obligation of States to settle their disputes by peaceful means already existed, but there was no obligation with regard to settlement procedures leading to binding decisions, either arbitral or judicial: no State could be sued without its consent.

22. His delegation held that the means of peaceful settlement provided for in Article 33 of the Charter of the United Nations should be reaffirmed in the convention, although the choice of means should be left to the parties in dispute. However, the convention should provide for procedures leading to settlement through binding decisions in cases in which parties failed to settle the dispute by those means. The application of the convention would undoubtedly give rise to disputes as to both interpretation and application, because it would be a comprehensive convention and would embody new legal institutions and rules. It might therefore be difficult for many States to endorse its provisions unless they were certain that there would be no unilateral interpretation in their application. States should therefore have access to an effective system and machinery for the settlement of disputes arising from the interpretation and application of the convention, but there should be nothing to prevent the settlement of disputes through informal and non-compulsory means and procedures, and it should be open to States to choose their own ways to reach agreement before resorting to binding procedures.

23. The practice of Yugoslavia was diversified and selective, depending in each specific case on the importance, nature and requirements of a given bilateral or multilateral treaty or convention. Yugoslavia had ratified the optional protocol to the 1958 Geneva Conventions on the Law of the Sea[5] and other multilateral conventions containing obligations to submit disputes concerning interpretation and application to the International Court of Justice, although it had made exceptions and reservations with regard to some of them. Finally, his delegation believed that the norms relating to the settlement of disputes should be an integral part of the convention.

24. With regard to courts and tribunals, the convention should provide for recourse to another court, in addition to the International Court of Justice, to which juridical and natural persons other than States would have access. Such persons, and the Authority itself, should have access to a court as parties to a dispute.

25. His delegation attached particular importance to the compulsory settlement of disputes by arbitration. The convention should therefore allow for arbitral settlement of disputes. Both *ad hoc* arbitration and institutionalized arbitration had advantages and disadvantages. His delegation did not rule out any form of arbitration, and reserved the right to revert to the matter at a later stage.

26. With regard to the machinery and procedures for settling disputes arising out of the interpretation and application of the convention, his delegation favoured a flexible combination of the general and functional approaches. The time had not yet come to deal with the details of that combination, which should be the object of careful study. The convention might provide for special procedures in the case of specified institutions and norms. Provisions on the composition of judicial and arbitral bodies should stipulate that those bodies should possess adequate technical knowledge, and qualified experts should participate in all bodies taking binding decisions. The relationship between special procedures and the general procedure should be clearly defined in order to prevent secondary disputes arising out of disagreement as to what procedure should be applied in a specific case.

27. With regard to exceptions, it would be best if there were none at all; a list of exceptions would considerably reduce the value and effectiveness of the convention. However, since the exclusion of exceptions might not be acceptable to all States, every proposed exception should be carefully considered and, if accepted, should be formulated very clearly, and its scope and application should be interpreted restrictively.

28. His delegation was prepared to accept, after the current debate in the plenary, an informal single negotiating document, part IV, with the addendum, as a basis for further negotiations.

29. Mr. WITEK (Poland) said that in general his delegation favoured an effective and binding system for the settlement of disputes. The inclusion of such a system in the future convention would make it easier for many delegations to accept certain new concepts and regulations.

30. His delegation favoured the functional approach to the settlement of disputes and consequently supported the establishment of a sea-bed tribunal, as one of the organs of the Sea-bed Authority, which should have jurisdiction in all matters falling within the scope of part I of the convention. It also favoured the establishment of special procedures and bodies to deal with disputes concerning fisheries, pollution, scientific research, and possibly additional matters, such as navigation.

31. His delegation found it difficult to agree that a distinction should be drawn, for the purpose of deciding which type of procedure should be used, between disputes of a technical nature involving the application of articles of the convention and disputes of principle concerning its interpretation. In many cases it would be difficult to distinguish between the two types of disputes and to separate the application of the convention from its interpretation. Moreover, when resort to a special procedure resulted in a binding decision, in principle there should be no appeals procedure. The possibility of appeal would only complicate the settlement of disputes.

32. His delegation did not, however, reject other means for the settlement of disputes, including general judicial procedures, and in that connexion it fully supported article 2 of the text submitted by the President (A/CONF.62/WP.9). However, since the majority of disputes were likely to be settled by special procedures, his delegation questioned the desirability and necessity of establishing a law of the sea tribunal with the comprehensive functions suggested in that document. The arbitration procedures provided for in annex I B of the document, together with the International Court of Justice, provided satisfactory machinery for general proce-

[5] *Optional Protocol of Signature concerning the Compulsory Settlement of Disputes* (United Nations, *Treaty Series*, vol. 450, p. 169).

dures for the settlement of disputes. The Statute of the Court allowed it sufficient flexibility to handle disputes expeditiously and with expert advice.

33. His delegation was unable to support the provisions of article 13 of the document, which allowed intergovernmental organizations and, in particular, natural and juridical persons, general access to tribunals. Such provisions were contrary to the general norms of contemporary international law and international practice, and would probably be unacceptable to the majority of States. Under that article, nationals of a State might, against the will of that State, become parties to disputes with foreign States and international organizations, a situation that was incompatible with the recognized principle of the jurisdiction of States over their nationals. His delegation favoured, in principle, limiting access to procedures for the settlement of disputes to States; however, it agreed that the Sea-bed Authority and, in some cases, natural and juridical persons should have access to the proposed sea-bed tribunal, but the scope of and rules for such access should be clearly defined in the convention.

34. With regard to article 18, while his delegation accepted the idea that States, when agreeing to be bound by the convention, might declare that they did not accept certain procedures for certain categories of disputes, it found the exceptions in paragraphs 1 and 2 *(b)* most unfortunate. The jurisdiction of coastal States and other rights and prerogatives of those States should be treated in the same manner as the rights and prerogatives of other States.

35. His delegation was prepared to negotiate on any provisions on the settlement of disputes which would serve the interests of the international community as a whole. Arrangements for considering the draft text under discussion should be announced promptly in order to avoid pressures of time.

36. Mr. BÁKULA (Peru) said that his delegation firmly supported the principle that States should settle their disputes by freely chosen peaceful means, as provided in Article 33 of the Charter of the United Nations. Provisions on the settlement of disputes should be incorporated in the convention, and the system established should supplement other methods already agreed to by States for the settlement of disputes.

37. In his view, a distinction should be made between the area within which States exercised jurisdiction and areas outside that jurisdiction. State organs should have competence to settle disputes on matters arising in the area within the State's own jurisdiction: that was consistent with the need for a balance between the jurisdictional power of the State and its obligations under international agreements and arrangements. His country's position regarding the principles governing freedom of communication was well known.

38. The Conference should, therefore, concentrate on developing a satisfactory system for the settlement of disputes relating to international ocean space. His delegation was not convinced of the advantages of the proposed functional system and its attendant special procedures. To submit disputes to special committees composed of experts recommended by various specialized agencies was undesirable for several reasons, including the possibility of divergent interpretations of the convention, of overlapping jurisdiction and of relations with the existing jurisdictional organ, and the impossibility of differentiating between technical and legal issues. Accordingly, the establishment of a law of the sea tribunal under a general system for the settlement of disputes was preferable. Under such a system, the convention could be uniformly applied and disputes would be settled expeditiously. Equitable geographical distribution should be taken into account in establishing the tribunal. Moreover, while it was desirable to avoid a proliferation of jurisdictional organs, the new law of the sea would constitute a legal order requiring considerable specialization, and the tribunal should accordingly have the necessary technical and expert support.

39. His delegation considered that only States should have access to the jurisdictional organ and be parties to disputes relating to the interpretation or application of the convention. Bearing in mind the responsibilities of the International Sea-bed Authority with respect to the sea-bed, international intergovernmental organizations and persons entering into contracts with the Authority could have access to the jurisdictional organ, but only with respect to disputes arising out of those contracts; they could not be parties to disputes involving a State. Disputes relating to the sea-bed itself should also be submitted to the law of the sea tribunal. The question should be considered by the First Committee, and he welcomed the suggestion to establish an *ad hoc* committee of the plenary to discuss the settlement of disputes in co-ordination with the other Committees.

40. His delegation reserved its final position on the settlement of disputes pending the outcome of the discussions in the three Main Committees, since the part of the convention relating to the settlement of disputes would depend to a large extent on the agreement reached in those Committees.

Mr. Shehab (Egypt), Vice-President, took the Chair.

41. Mr. RANJEVA (Madagascar) said that his delegation was prepared to give its full support to any proposal designed to ensure the peaceful settlement of disputes in international relations, including disputes relating to the law of the sea. In the past such disputes had tended to be settled at the expense of small coastal States, which had had to tolerate flagrant injustices.

42. It was for that reason that his delegation was insisting that the criteria for the jurisdiction of the organ to be established for the settlement of disputes must be clear and simple in order to ensure the effectiveness of the machinery and obviate legal chicanery. Much of the argument with regard to the geographical jurisdiction of the proposed organ seemed to his delegation to be purely speculative and abstract. Disputes arose out of situations or acts which did not exist in the abstract, and they had to be placed within their natural framework with a view to defining their real dimensions. Accordingly, his delegation had in 1973 supported a proposal on the regionalization of the settlement of disputes (A/AC.138/SC.II/L.40).[6] However, in the event that a conflict arose as to what regional organ had jurisdiction, the organ of the State in which the dispute had actually occurred or where its consequences had been felt should be deemed to have jurisdiction.

43. His delegation agreed that the Conference should move beyond the divergent points of view expressed in the informal working group with respect to the jurisdiction *ratione materiae* of organs responsible for the settlement of disputes. While a distinction should be drawn between matters which could be submitted to dispute settlement procedures and others which could not, it would be unwise to allow for too many exceptions. Accordingly, his delegation proposed, as a criterion for admitting an exception, that the only matters not amenable to dispute settlement procedures were those falling within the exclusive competence of the State in question. In practice, disputes arising out of a situation or act which had occurred in the territorial sea or exclusive economic zone of a State would fall within the jurisdiction of the coastal State, and not that of the machinery for the settlement of disputes. The dispute settlement procedure

[6] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21*, vol. III, sect. 29.

must not be distorted in such a way as to jeopardize the economic or legal security of the coastal State.

44. As to the procedures to be applied, his delegation was convinced that arbitration was the most realistic procedure for the settlement of disputes, along with other traditional methods to which the parties might agree. States, in fact, were less afraid of possible infringements of their sovereignty than of procedural errors or abuses, which did not arise in arbitration procedure. His delegation had some difficulty in accepting the distinction made between States accepting the clause attributing competence to a jurisdictional organ and those accepting the clause attributing competence to an arbitral organ. A solution to that situation could be found only in a new definition of the role of the jurisdictional organ, namely, the law of the sea tribunal.

45. The tribunal, in his delegation's view, would be an organ to which parties would appeal against the decisions of regional or specialized organs. The primary responsibility for applying the new rules should rest with those organs, with the tribunal establishing broad principles governing interpretation and the settlement of issues. The tribunal should also monitor the legality of the actions of the International Authority in the application of the convention. The International Court of Justice could, indeed, serve as the law of the sea tribunal, provided that the necessary amendments were first made to its Statute. With regard to access, his delegation considered that only States and intergovernmental organizations should have access to the machinery for the settlement of disputes.

46. His delegation would suggest amendments to the informal single negotiating text submitted by the President when the individual articles were discussed.

47. Mr. NJENGA (Kenya) expressed appreciation of the efforts of the private group of eminent jurists who had been working on the settlement of disputes for some time. However, since the group was entirely informal, its work could not represent the views of either the Government or delegation of Kenya, even though a member of his delegation had participated in it.

48. It was vital that the future convention should contain comprehensive provisions for a viable system for the settlement of disputes. Although his delegation found many positive elements in the proposals contained in document A/CONF.62/WP.9, it had some fundamental difficulties with the approach taken in the paper. First, the text required a State to submit to compulsory settlement any dispute relating to the interpretation or application of the convention. While his delegation would not be unduly concerned about compulsory settlement if it was confined to the interpretation of the convention, the extension of that procedure to the application of the convention caused it serious concern, and was unacceptable with respect to matters which fell within Kenya's national jurisdiction.

49. With regard to the proposals involving the exclusive economic zone, his delegation's understanding was that the coastal State was to exercise exclusive jurisdiction with respect to all matters connected with the exploration and exploitation of the natural resources of the zone. His delegation could not accept any obligation to submit the exercise of such jurisdiction to compulsory third-party settlement mechanisms, since such action might be used as a pretext for turning the exclusive economic zone into an international zone. All matters relating to that zone were exclusively within the competence of the coastal State, and to accept the possibility of compulsory third-party settlement would mean that the coastal State might be subjected to constant harassment by having to appear before international tribunals at considerable loss of time and money. Similarly, where the coastal State had been given clearly defined jurisdiction by the convention, particularly with respect to the preservation of the marine environment, its power would be negated if it could be subjected, each time it exercised such power, to compulsory dispute settlement systems on matters which could be dealt with through the local courts.

50. His delegation therefore found the general scheme provided for in the working paper to be unacceptable. Although article 18 provided a safeguard for the coastal State against being required to submit to the settlement procedure any "disputes arising out of the exercise by a coastal State of its exclusive jurisdiction" under the convention except in certain matters and although an attempt had been made to permit contracting parties to declare, on ratifying the convention, that they did not accept some or all of the settlement procedures in respect of certain kinds of disputes, article 18 did not adequately resolve the basic issue.

51. His delegation believed that it was in articles 9 and 10 that provision should be made for exempting all disputes relating to matters within the exclusive jurisdiction and competence of the coastal State. Consequently, it did not accept annexes II A, II B and II C, as they stood. Naturally, that should not be taken to mean that nothing in the three spheres covered by these annexes could be submitted to compulsory settlement procedures if the convention specifically so provided.

52. His Government was not, as matters stood, prepared to agree that procedures for the peaceful settlement of disputes should be open to intergovernmental organizations or natural or juridical persons on an equal footing with contracting parties, although a case might be made for the competence of such entities with respect to activities in the sea-bed beyond national jurisdiction. Moreover, any system of disputes settlement should allow a State to choose its modes of settlement. A State might first try informal means, and for that reason provisions for the automatic transfer of cases from informal settlement procedures to compulsory formal procedures should be avoided. In cases in which compulsory settlement was appropriate, the defendant State should have the option to determine which of the compulsory forms it would consent to. While his delegation did not object to any State's making that determination on ratifying the convention, it was opposed to inadvertently creating a system of compulsory settlement which might be used by the developed States to impose their will on the developing States through constant international adjudication. It remained committed, nevertheless, to compulsory settlement of disputes in appropriate situations.

53. Finally, although his delegation agreed that it might not be advisable for the time being to establish another committee on the subject, a more formal working group representing a cross-section of the views expressed during the general debate would be needed in order to prepare a suitable settlement mechanism which would emphasize dispute avoidance, as opposed to dispute settlement through adjudicatory procedures. It was, of course, imperative that all legal issues should find a forum for settlement expeditiously and inexpensively.

Mr. Andersen (Iceland), Vice-President, took the Chair.

54. Mr. D'STEFANO PISSANI (Cuba) said that the convention had to contain provisions for the settlement of disputes arising out of its application. There were two fundamental considerations: first, the proposed convention was unusual in its complexity, the innovative nature of many of its provisions, the interdependence of the legal, political and economic aspects of its subject, and its status as a source of international co-operation; secondly, everyone agreed that disputes should be settled peaceably in accordance with the principles set forth in Articles 2 and 33 of the Charter of

the United Nations. A corollary of those two considerations was that the new and complex norms might on occasion create uncertainties and contradictions and that the convention itself, by linking *lex ferenda* to *lex lata*, opened new and wide-ranging prospects which would inevitably be subject to interpretation. Accordingly, in order to minimize the possibility of disputes, the suggestion in annex III of document A/CONF.62/WP.9 concerning the desirability of parties making available to one another information regarding the adoption or application of measures within the scope of the convention was very valuable.

55. The next step was for the Conference to establish an informal open-ended working group to deal with the outstanding questions and reach conclusions regarding the type of tribunal to be set up, who should have access to tribunals, how to avoid overlapping of competences and other matters. Many of the reasons advanced for rejecting the compulsory jurisdiction of the International Court of Justice were still valid; it was a fact that some countries still believed that the function of international law was to protect certain interests—in other words, the *status quo*. In addition, the advocates of an optional clause with regard to acceptance of the Court's jurisdiction ignored the fact that not only had very few States accepted Article 36 of the Court's Statute, but those which had had made such reservations on matters falling within their domestic jurisdictions as to render the Article almost meaningless. An international tribunal of any nature could be authorized to apply, in certain circumstances, principles other than those of statute law: for instance, it could settle any dispute *ex aequo et bono* if the parties so agreed, a fact which implied that it could operate as a friendly arbitrator on matters which were not of a purely legal nature. Arbitration was another possibility as, too, were the arrangements provided for in article 66 of the Vienna Convention on the Law of Treaties[7] and the relevant procedure in the annex thereto.

56. In conclusion, he stressed the need for the dispute settlement procedure to form part of the convention. To achieve that end, all delegations would have to work together to dispel all the doubts which were being revealed in the general debate and to find practical and flexible solutions.

57. Mr. ADENIJI (Nigeria) said that the need for a dispute settlement procedure forming an integral part of the convention was obvious. His delegation believed that such a procedure should be compulsory, because only such a procedure could safeguard the interests of all countries and ensure that the convention would not be rendered useless by unilateral actions. Once parties realized that their actions under the convention were subject to scrutiny by a third party, they were likely to be cautious; that, in itself, might be a good prescription for avoiding disputes. So, too, was the idea contained in annex III of document A/CONF.62/WP.9, concerning information and consultation.

58. His delegation agreed with the President that an effective dispute-settlement procedure would guarantee that the intent of the legislative language of the convention would be interpreted consistently and equitably. That document provided a good focal point for the discussion. Naturally, like the other parts of the convention, the final text would be the product of compromise. Subject to every stage in the settlement procedure being made compulsory, his delegation was willing to support flexibility as to the form of machinery preferred. Indeed, his delegation had earlier advocated the type of flexibility reflected in article 57 of part I of the single negotiating text (see A/CONF.62/WP.8). His delegation accepted conciliation as a basic procedure for dispute settlement and, since compulsory conciliation procedure had already been accepted in the Vienna Convention on the Law of Treaties, it saw no reason why that should not be made applicable in the law of the sea convention.

59. A realistic approach was one that, in addition, permitted States to choose freely between special procedures on specific issues, arbitration, or resort to the International Court of Justice on the understanding that, in each case, the decision would be binding on the parties to the dispute. His delegation would prefer the International Court of Justice to be used in disputes arising from the interpretation and application of the convention in general because, apart from enhancing the Court's role as the judicial organ of the United Nations, States could thus benefit from the experience of the Court in dealing with cases arising out of the 1958 Conventions on the same subject. However, disputes arising out of the exploration and exploitation of the area beyond national jurisdiction were *sui generis* and should be subject to a tribunal other than the International Court of Justice. His delegation was therefore in favour of a permanent tribunal to deal exclusively with the part of the convention relating to the international area. The principle of finality referred to in paragraph 23 of the President's memorandum (A/CONF.62/WP.9/Add.1) would in that way find expression in both bodies.

60. Finally, his delegation was concerned that, if the many exceptions to compulsory jurisdiction formulated in article 18 were accepted, the over-all effect might be to erode the effectiveness of the dispute settlement procedure. Some way should be found to protect the interests of coastal States without vitiating the whole system. In conclusion, he said that when that part acquired the status of the rest of the single negotiating text his delegation would give it the same detailed attention it had given the other parts.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

61. Mr. SARAIVA GUERREIRO (Brazil) said that while widespread understanding might exist on what the basic content of the substantive chapters of a generally acceptable convention on the law of the sea might be, the same was not true with respect to that on dispute settlement procedures. Prior to the general debate, there had been no way of ascertaining the feelings of most delegations on that all-important subject. There had therefore not been enough background for the preparation of document A/CONF.62/WP.9, which was based to a considerable extent on the work of an informal group on the settlement of disputes whose existence had never been endorsed by the Conference.

62. His delegation appreciated the efforts made by the President in preparing the document, but since its provisions endorsed the view of certain major maritime Powers that all disputes should be subject to some form of compulsory dispute settlement, his delegation could not accept it as a basis for negotiation.

63. Although Brazil had extended its territorial sea to 200 miles six years earlier, it was willing to consider the proposal for an exclusive economic zone. His delegation believed—as did the majority of the delegations participating in the Conference—that that zone was one in which the coastal State had sovereign rights or exclusive jurisdiction for economic and related purposes. That position was not compatible with the sweeping premise of document A/CONF.62/WP.9, which would subject matters falling within the exclusive jurisdiction of the coastal State to compulsory international dispute-settlement procedures in all cases. To accept that premise, even as a basis for negotiation, would be implicitly to accept that the national

[7] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70,V.5), document A/CONF.39/27.

economic zone was merely a part of the high seas. Disputes between parties to the convention relating to matters under the jurisdiction of the coastal State should be settled through the peaceful means cited in Article 33 of the Charter of the United Nations. Naturally, procedures could be explored whereby, in clearly defined circumstances, certain matters might be referred to some type of international conciliation or arbitration machinery. However, the ensuing recommendations should not be binding unless the parties had agreed otherwise beforehand. With regard to disputes on matters relating to the area beyond the limits of national jurisdiction, the convention should, in many instances, provide for compulsory jurisdiction.

The meeting rose at 6 p.m.

62nd meeting

Wednesday, 7 April 1976, at 10.25 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes *(continued)* (A/CONF.62/WP.8/WP.9 and Add.1)

1. Mr. NIMER (Bahrain) said that the President's single negotiating text (A/CONF.62/WP.9) remedied many of the deficiencies in existing conventions on the settlement of disputes. The settlement of disputes in the past had been adversely affected by the unwillingness of one of the parties to co-operate for reasons involving national sovereignty.

2. Under articles 8, 9 and 10 of the text, the parties to a dispute would be required to recognize the jurisdiction of the law of the sea tribunal, an arbitral tribunal or the International Court of Justice. Article 9, paragraph 1, provided that the law of the sea tribunal would have compulsory residuary jurisdiction to decide upon the matters in dispute; thus an attempt was being made to achieve what the former Permanent Court of International Justice and the present International Court of Justice had failed to accomplish in the general field of international relations.

3. The compulsory jurisdiction of the proposed law of the sea tribunal should be limited to matters concerning the international sea-bed area as defined in General Assembly resolution 2749 (XXV). Disputes relative to areas outside the international area should be settled by the law of the sea tribunal in accordance with the procedures set forth in article 9, paragraph 2, of the President's text, as was the case with the arbitral tribunal and the International Court of Justice.

4. His delegation welcomed the provisions of article 13, paragraph 4, and felt that they should be extended to cover the liberation movements which had participated in the Conference as observers.

5. The idea of entrusting the settlement of disputes concerning fisheries, pollution and scientific research to technical bodies was unacceptable because it was provided for in the general procedure in the text, and because the members of such bodies might not have the necessary legal knowledge not only to apply, but occasionally to interpret, the convention.

6. Under article 18, paragraph 1, States would not be required to submit to the dispute settlement procedures any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction in the exclusive economic zone, save in two categories of dispute. That provision might have unduly adverse effects on land-locked and geographically disadvantaged countries and should be reviewed.

Mr. Medjad (Algeria), Vice-President, took the Chair.

7. Mr. GAYAN (Mauritius) said his delegation was aware that the chapter on the machinery for the peaceful settlement of disputes might well prove to be the key to a widely accepted convention. For the sake of completeness, and because of the many new activities that would be carried out in ocean space, the new convention on the law of the sea should prescribe a procedure for the settlement of the disputes arising out of it. Ideally, the Conference should draw up a convention that would minimize the possibility of conflicts and should provide for a system for resolving any conflicts that might arise before they had time to develop into serious disputes. Its primary concern, however, should be to draft clear substantive provisions with a view to avoiding conflicting interpretations.

8. His delegation was glad to note that the President's text (A/CONF.62/WP.9) gave concrete form to some of the peaceful means of dispute settlement enumerated in Article 33 of the Charter of the United Nations. The starting-point, in so far as the settlement of disputes between States by a third-party procedure was concerned, was the consent of the States parties to the dispute. That fundamental principle should be fully reflected in the future machinery for the peaceful settlement of disputes under the new convention on the law of the sea.

9. Disputes could be expected to arise in two areas: first, the exclusive economic zone or the continental shelf of a State; and, secondly, all areas beyond the limits of national jurisdiction.

10. Since the coastal State exercised sovereign rights over the first area, it was natural that the national tribunals of that State should be the only competent forums for the settlement of disputes arising in that area; that principle was intrinsic to the basic notion of State sovereignty. To opt for any other system would be to invite abuse by, for example, States entitled to participate in the exploitation of the living resources of the exclusive economic zone of a coastal State. Under a compulsory procedure system, such States might bring the coastal State before tribunals whenever the latter adopted measures within its exclusive economic zone. Were that to happen, needless tension and bad feeling would be created among neighbouring States. It might be argued that the neighbouring States should be presumed to act reasonably, but there would have to be the same assumption in the case of the coastal State. The premise on which the new convention should be based was that of co-operation be-

[3] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

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62nd Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

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Settlement of disputes *(continued)* (A/CONF.62/WP.8[1]WP.9 and Add.1)

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3. The compulsory jurisdiction of the proposed law of the sea tribunal should be limited to matters concerning the international sea-bed area as defined in General Assembly resolution 2749 (XXV). Disputes relative to areas outside the international area should be settled by the law of the sea tribunal in accordance with the procedures set forth in article 9, paragraph 2, of the President's text, as was the case with the arbitral tribunal and the International Court of Justice.

4. His delegation welcomed the provisions of article 13, paragraph 4, and felt that they should be extended to cover the liberation movements which had participated in the Conference as observers.

5. The idea of entrusting the settlement of disputes concerning fisheries, pollution and scientific research to technical bodies was unacceptable because it was provided for in the general procedure in the text, and because the members of such bodies might not have the necessary legal knowledge not only to apply, but occasionally to interpret, the convention.

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8. His delegation was glad to note that the President's text (A/CONF.62/WP.9) gave concrete form to some of the peaceful means of dispute settlement enumerated in Article 33 of the Charter of the United Nations. The starting-point, in so far as the settlement of disputes between States by a third-party procedure was concerned, was the consent of the States parties to the dispute. That fundamental principle should be fully reflected in the future machinery for the peaceful settlement of disputes under the new convention on the law of the sea.

9. Disputes could be expected to arise in two areas: first, the exclusive economic zone or the continental shelf of a State; and, secondly, all areas beyond the limits of national jurisdiction.

10. Since the coastal State exercised sovereign rights over the first area, it was natural that the national tribunals of that State should be the only competent forums for the settlement of disputes arising in that area; that principle was intrinsic to the basic notion of State sovereignty. To opt for any other system would be to invite abuse by, for example, States entitled to participate in the exploitation of the living resources of the exclusive economic zone of a coastal State. Under a compulsory procedure system, such States might bring the coastal State before tribunals whenever the latter adopted measures within its exclusive economic zone. Were that to happen, needless tension and bad feeling would be created among neighbouring States. It might be argued that the neighbouring States should be presumed to act reasonably, but there would have to be the same assumption in the case of the coastal State. The premise on which the new convention should be based was that of co-operation be-

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

tween States on the assumption that all States would comply with the provisions of the new convention in good faith. In the view of his delegation, the reasons for not having a compulsory procedure for dispute settlement in areas of national jurisdiction were overwhelming.

11. His delegation was nevertheless in favour of a compulsory procedure for the settlement of disputes arising within the ambit of the International Sea-bed Authority and believed that there should be a special tribunal for the régime of the sea-bed. Such a tribunal would adjudicate all disputes of a commercial nature arising out of activities carried out, or to be carried out, in the international sea-bed area between the Authority and applicants, whether natural or juridical persons, or between the Authority and States or any combination of those parties. The tribunal should adopt a functional approach and its procedure should be simple and expeditious. It would be composed of independent judges, elected on the basis of equitable geographic distribution, but would not be competent to review the policy guidelines of the Assembly, the supreme organ of the Authority.

12. It was not necessary or desirable to establish a law of the sea tribunal to deal with matters other than those relating to the work of the First Committee. Such a measure, as proposed in the President's text, would be a luxury. The International Court of Justice could be used for the same purpose and could act with greater authority; indeed, it had already proved itself to be responsive to law of the sea problems in general. It should be borne in mind that arbitration was the method favoured by States for the solution of international disputes.

13. His delegation did not agree that there should be special procedures to settle specific problems. The special procedures proposed in the President's informal text could give rise to delays and uncertainty as to the proper forum in the case of mixed disputes; consequently the entire subject should be completely rethought.

14. The machinery for the peaceful settlement of disputes should provide for a wide choice of modes of settlement and should be dealt with in an optional protocol. A compulsory third-party settlement procedure could not be imposed on sovereign States.

15. As most of the disputes that might arise would be of a regional or subregional character, the Conference should study the possibility of providing for regional arrangements to deal with the peaceful settlement of disputes.

16. Mr. NYAMDO (Mongolia) expressed appreciation to the President for the text he had proposed on the settlement of disputes, which would serve as a basis for further discussion of that question. He merely wished to emphasize that the question of procedures for the settlement of disputes concerning the interpretation and application of the convention was fully as important as other questions relative to the law of the sea. His delegation therefore agreed with other speakers that the question should be solved on a "package" basis.

17. The peaceful settlement of disputes was one of the generally recognized principles of contemporary international law by which Mongolia was guided in its foreign policy activities.

18. His delegation wished to emphasize the significance of the peaceful means for the settlement of disputes between States enumerated in Article 33 of the Charter of the United Nations. In his delegation's opinion the entire system for the settlement of disputes arising out of the interpretation and application of the convention should be based on the provisions of Article 33 of the Charter. His delegation therefore welcomed the present wording of article 1 of document A/CONF.62/WP.9. It also considered that another important principle to be observed when elaborating a system for dispute settlement was the principle of freedom of choice by the parties to a dispute, regarding the most appropriate means of settlement. That principle was especially important in the case of arbitral or judicial settlements. That principle was fully applicable to disputes that could arise in connexion with the interpretation and application of the convention. His delegation therefore considered that the consent of all parties to a dispute to the submission of that particular dispute to arbitral or judicial proceedings was essential.

19. With regard to access by natural or juridical persons to procedures for the settlement of disputes, his delegation considered that only sovereign States should be the subject of a dispute. Mongolia supported the suggestions made by those delegations that favoured the deletion of certain provisions dealing with natural and juridical persons. It was also in favour of deleting paragraph 2 *(a)* of article 18 of the text, because it failed to make proper provision for the legitimate rights and interests of States other than coastal States, and it accordingly proposed the deletion of article 14 from the text.

20. Mr. KABONGO (Zaire) said that the law of the sea was being reviewed in the new spirit which had inspired the United Nations ever since the first United Nations Conference on Trade and Development. Since that time, the United Nations had sought to promote the economic goals laid down in Article 55 *a* of its Charter, with a view to creating the conditions of stability and well-being which were necessary for peaceful and friendly relations among nations.

21. The Third United Nations Conference on the Law of the Sea, and particularly the economic planning commission provided for in the future convention, also had a role to play in the establishment of the new international economic order. Bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, the economic planning commission would make recommendations to the Council of the International Sea-bed Authority in order to avoid or minimize adverse effects on developing countries whose economies substantially depended on the revenues derived from the export of minerals and other raw materials originating in their territories.

22. The spirit of the convention currently being elaborated was quite different from that of the 1958 Conventions on the Law of the Sea. That was because it was being drawn up within the framework of a broader, more diversified international community. That new factor called for new formulas. For example, the International Sea-bed Authority must be granted certain economic prerogatives within the international area. A balance of interests must be established if the organs of the Authority were to be able to function and cope with structural problems and the economic problems of the moment.

23. The new convention should take account not only of the interests of the coastal States but also of the interests of the international community and of the land-locked and geographically disadvantaged countries.

24. The future law of the sea tribunal should have general jurisdiction to deal with disputes relating to the interpretation or the application of the convention. It should cooperate with the organs of the United Nations, including the International Court of Justice.

25. His delegation welcomed the diplomatic, regional and arbitration procedures outlined in document A/CONF.62/WP.9 and felt that the special procedures were acceptable in so far as they related to technical matters.

26. The articles proposed in the President's text were linked to substantive articles concerning such subjects as the

delimitation of ocean space, procedures for the exploitation of ocean space, and navigation. His delegation would therefore comment on the text on the settlement of disputes at a later stage.

27. Mr. DRISS (Tunisia) said that, in view of the functions assigned under the Charter to the International Court of Justice in the matter of the settlement of disputes, the establishment of a single system for the settlement of disputes—the law of the sea tribunal—gave rise to some difficulties. However, a possible solution might be to establish a link between the law of the sea tribunal and the International Court of Justice, enabling the tribunal to request opinions of the Court without thereby delaying its own procedure. It should therefore be recommended, at the end of the current discussion, that the elaboration of a single text dealing with the settlement of disputes should be industriously pursued so that the text could become a part of the convention on the law of the sea. The establishment of a suitable system for the settlement of disputes was the only means of guaranteeing the effective implementation of the new convention. Consequently, some decision should be taken regarding the necessary framework for dealing with the question of the settlement of disputes and regarding the status to be accorded to part IV of the single negotiating text (A/CONF.62/WP.9). Certain options regarding the substance of the question should also be made clear.

28. The importance of the subject, which had been debated in small informal working groups in which many of the developing countries had been unable to participate, necessitated a decision on the establishment of a formal working group on the settlement of disputes, in accordance with rule 50 of the rules of procedure of the Conference. Document A/CONF.62/WP.9 could provide a basis for that working group's discussions. However, his delegation wished to make it clear that that latter proposal should not be construed as prejudging its final position regarding that document.

29. As far as the substance of the question of the settlement of disputes was concerned, account should be taken of all the basic principles designed to safeguard the legitimate interests of all members of the international community, particularly those which would: first, ensure the rule of law based on equity and justice, while safeguarding the sovereignty and equality of States; secondly, ensure that the new convention was interpreted uniformly; thirdly, enable the parties concerned to exercise options within the framework of the system finally adopted. Proceeding from those principles, his delegation would prefer a compulsory system for the settlement of disputes, since such a system would give true meaning to the legal régime to be established. However, the principle of equitable geographic distribution must be taken into account in the composition and structure of such a system. The system for the settlement of disputes should thus be a single system, so as to ensure the uniform application and interpretation of the convention. The proliferation of international jurisdictional bodies would only complicate problems, exacerbate disputes and be detrimental to the convention.

30. The law of the sea tribunal could consist of at least two chambers, one of which would deal with matters relating to the exploration and exploitation of the international area, while the other would concern itself with other problems that might arise in the course of implementing the convention. That would not prevent national courts from exercising exclusive jurisdiction in the areas coming under their exclusive jurisdiction. In principle, only States would have access to the tribunal; however, natural and juridical persons engaging under contract in exploration and exploitation activities in the international area would also have the right of access to the tribunal. Other natural and juridical persons should not have such access. The recognized liberation movements might, however, be granted access to the tribunal in cases where decisions were necessary to preserve their national heritage.

31. The conciliation procedure provided for in annex I C of document A/CONF.62/WP.9 seemed sound. The idea might be extended by enabling the law of the sea tribunal to recommend that the parties resort to conciliation if they have not resorted to that procedure. His delegation would not be averse to giving States the option of resorting to arbitration within the framework of the single system for the settlement of disputes.

Mr. Jusuf (Indonesia), Vice-President, took the Chair.

32. Mr. BALLAH (Trinidad and Tobago) said that the question at issue was not whether dispute settlement procedures were necessary within the framework of the new law of the sea convention, but whether they could be usefully discussed at the present juncture, given the need to relate such procedures to substantive rules that had still to be negotiated. On the other hand, broad agreement on dispute settlement procedures might facilitate agreement on some of the substantive issues.

33. Document A/CONF.62/WP.9 envisaged that States parties to the convention could, in accordance with articles 1 to 5, resort to the settlement of disputes regarding the application or interpretation of the convention, either by reference to such peaceful means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or by reference to regional agencies, regional arrangements or to other peaceful means of their own choice. His delegation maintained a flexible position with respect to the employment of any of those means or of other procedures established under existing international instruments to which Trinidad and Tobago was a party.

34. The document also gave priority to three functional five-member committees, which were empowered to prescribe binding provisional measures, or eventually binding decisions, in specific areas such as fisheries, marine pollution and scientific research. That provision needed careful study by the Conference, since it might touch directly on the jurisdiction of coastal States, and, if adopted as it stood, might create greater problems than it sought to resolve. Consideration might be given to the setting up of rosters of experts in the three fields of pollution, scientific research and fisheries, who would be nominated by their respective Governments. That body of experts could serve as a very useful fact-finding technical committee in the event of disputes arising between States on those matters. His delegation would be prepared to consider conferring on those functional committees the power to make technical recommendations, as suggested in the paper itself. Such technical fact-finding and recommendations by those functional committees would be of tremendous assistance to the parties to a dispute, since they could provide the basis upon which meaningful negotiations could be conducted.

35. The pacific settlement procedure for conciliation provided for in article 7 and annex I A was satisfactory to his delegation. It was a well-established dispute-settlement procedure which was fundamental to the process of dispute settlement. The Conference might wish, however, to consider whether parties resorting to conciliation should also be able to establish a balanced functional committee to prepare an objective technical fact-finding report to assist the parties concerned.

36. His delegation would like to see included in the text an article which would provide that where resort to negotiation, enquiry, mediation or conciliation had not resolved the dispute, the matter could then be referred to third-party adjudication. Contracting parties could resort either to a law

of the sea tribunal, an arbitral tribunal or to the International Court of Justice, in accordance with its Statute and the relevant provisions of the Charter. The system proposed provided some interesting alternatives which were worthy of consideration. Trinidad and Tobago had not yet taken a firm position, but, like many other States, it had its reservations about conferring compulsory jurisdiction on the International Court of Justice for the purpose of resolving international disputes. The Court had unfortunately not enjoyed the confidence of a considerable number of States and had, as a result, remained largely unemployed.

37. The informal single negotiating text also proposed, in article 9, paragraph 2 and annex I B, the establishment of an arbitral tribunal whose decisions would be binding. States parties could deposit written declarations accepting as compulsory the jurisdiction of the arbitral tribunal in relation to any other contracting party which had undertaken the same obligation. Arbitration had been a successful way of resolving several international disputes and was also known in domestic jurisdiction. His delegation had as yet no strong objections to that proposal, but considered further discussion necessary in order to work out the detailed mechanisms of that procedure.

38. Another approach to third-party adjudication was the proposed creation of a law of the sea tribunal structured in much the same way as the International Court of Justice. Three major innovations were proposed in the statute of the law of the sea tribunal: first, its jurisdiction would automatically be binding on all parties to the convention; secondly, its members were to be elected on an equitable geographic basis; and thirdly, greater emphasis was to be laid on the adjudication of disputes by a chamber of three judges rather than by the full court of 15 judges. His delegation's first reaction was that the creation of such a tribunal to deal only with law of the sea matters could mean the establishment of yet another costly international mechanism which might be under-utilized. His delegation was prepared, however, to give it serious consideration.

39. Referring to article 13, which identified those entities which would have access to the dispute settlement procedure set out in the convention, he said that in order to determine the extent of access to those procedures, it was necessary to determine whether the sea-bed tribunal envisaged in document A/CONF.62/WP.8/Part I, article 32, was to remain separate from other dispute settlement procedures. The development of the international sea-bed area would involve huge investments in both capital and technology and it would seem necessary to have the kind of permanent specialized tribunal which could build up its own jurisprudence and which could determine cases as expeditiously as possible. If that was acceptable, then access to such a tribunal could be made open to international organizations as well as to natural and juridical persons involved in scientific research, prospecting, evaluation, exploration and exploitation and other related activities.

40. The President should prepare a revised single negotiating text, which would take into consideration the statements made in the general debate. Such a revised text could then form the basis for discussion and negotiation, possibly by a small open-ended working group of the Conference constituted in accordance with the principle of equitable geographic representation.

41. Trinidad and Tobago had reached no final position on the subject of dispute settlement. His delegation would co-operate with the President in efforts to elaborate a dispute settlement machinery which would be generally acceptable to all States. Trinidad and Tobago remained committed to the principle of the peaceful settlement of all disputes.

42. Mr. LOVATO (Ecuador) said that all the States represented in the Conference were interested in and committed to the formulation of a new law of the sea whose machinery would include institutions which would ensure the effectiveness of a system for the peaceful settlement of disputes. A useful text would emerge only as a result of a mandate from the Conference, and a fully representative working group should be established to prepare such a text.

43. His delegation considered it essential to promote and suitably regulate voluntary procedures for the peaceful settlement of disputes and, in the event of compulsory jurisdiction, considered it necessary to safeguard the application of laws, regulations and procedures of the coastal State in those areas of the sea under its sovereignty and/or jurisdiction. It shared the view that parties to a dispute should be entitled to utilize the settlement procedure of their choosing. Article 33 of the Charter of the United Nations enumerated the various means to which the parties could resort in seeking a peaceful solution. In adopting a dispute settlement procedure the Conference should be guided by the spirit and letter of that Article. The machinery to be established by the convention would have to be considered supplementary to the voluntary procedures agreed upon by States.

44. Disputes arising from incidents occurring in areas under the sovereignty and/or jurisdiction of a State should be subject to national jurisdiction and compulsory or mandatory jurisdiction of an international tribunal should not apply in such cases. Furthermore, the compulsory jurisdiction of an international tribunal should not cover acts or measures which originate in a coastal State and occur within the sea area under its sovereignty and/or jurisdiction. Naturally, States should ensure proper submission of those disputes to their national tribunals.

45. Welcome statements had been made concerning traditionally accepted procedures for the protection of the nationals of a State in the event of unwarranted denial or delay of justice in the tribunals of another State.

46. His delegation was not opposed to the establishment of a law of the sea tribunal with compulsory jurisdiction applicable in sea areas outside national jurisdiction, but it felt that in the organization of such a tribunal there should be adequate representation of legal systems reflecting new trends in the law of the sea as well as the aspirations of the developing countries. The tribunal should be established in the light of the special features characterizing activities connected with the exploration and exploitation of the sea-bed and ocean floor, and any natural or juridical person having any contractual relationship with the authority should have access to the tribunal for the settlement of cases involving such activities.

47. His delegation was not in favour of establishing special procedures for disputes in areas such as fisheries, pollution and scientific research.

48. The norms governing the peaceful settlement of law of the sea disputes which were to be agreed upon would obviously depend on various other substantive norms, and it seemed inappropriate to anticipate an agreement on such norms without a thorough knowledge of all the other norms. Ecuador's position with respect to the peaceful settlement of disputes was therefore contingent upon prior adoption of acceptable substantive norms which fully guaranteed its rights.

Mr. Zegers (Chile), Vice-President, took the Chair.

49. Mr. NAJAR (Israel) said that it would have been easier to hold the debate on the question of dispute settlement after the text of the convention had been prepared. Although the general outline of a possible agreement had emerged from the work done at the sessions in Caracas and Geneva, the crystallization of such an agreement had not yet taken place.

The divergence of views was still wide, although not as wide as might be believed. For instance, there was still a preoccupying shadow on the subject of freedom of navigation and overflight in economic zones and in straits. The convention would not see the light of day until such doubts were dispelled and negotiations resulted in the universally desired positive solution. The problem of possible disputes and the settlement of disputes would, at that stage, no longer seem so complex and formidable as it did at present. What was needed then was to tackle the problem with a state of mind corresponding to an agreement happily reached rather than with a state of mind characteristic of a long and laborious negotiation still going on. Solutions would then appear much simpler than was currently generally believed.

50. His delegation did not believe that a great effort of innovation was required in dealing with the problems that could arise in connexion with the interpretation or application of the new convention. That convention was not the first international convention nor the first convention to deal with delicate technical problems. The world community had considerable experience in that respect.

51. The attachment of States to their sovereignty did not appear to have diminished, and their sensitivity even to apparent or relative restrictions on their freedom of political choice remained very acute. The future behaviour of States appeared unlikely to differ from behaviour in the past. Political, geographic and economic differences between States were real factors which could not be overlooked and which constituted the basis and justification for the limitations imposed on the jurisdiction of international judicial organs universal in space and indefinite in time. That was the case of the International Court of Justice and it was doubtful that States would renounce that prerogative in that domain. Simplistic solutions were therefore unlikely to stand the test of time.

52. While supporting, within the above mentioned limits, the inclusion in the convention of a compulsory clause for the peaceful settlement of disputes among States parties to the convention, his delegation felt it was useless and even harmful to establish a law of the sea tribunal as envisaged in document A/CONF.62/WP.9. From the point of view of international practice, the composition of the tribunal was questionable and its competence and powers unacceptable. States had a sufficient number of well tried methods for the settlement of disputes, such as those envisaged in the Charter of the United Nations and the Statute of the International Court of Justice.

53. As to the special procedures for the settlement of disputes in areas such as pollution and scientific research, committees of competent experts seemed particularly effective. The decisive importance of arbitration procedures was also to be stressed.

54. The only genuine innovation in the convention was the establishment of the International Sea-bed Authority. The doctrine of the rights of States over the sea-bed within the economic zones had been preceded by the 1958 Convention on the Continental Shelf.[2] Reserved fishing zones had long been in existence. Excellent treaties concerning pollution had already been signed and implemented, while others were being prepared. The exceptional and revolutionary nature of the International Sea-bed Authority perhaps justified the establishment of a special judicial organ, independent of the Authority and having jurisdiction suited to its operational requirements.

55. Various delegations had expressed the view that in that area alone the right of access to the special judicial organ could be given to entities other than States. His delegation would eventually give favourable consideration to such limited participation while consideration was deserved by more strict opinions—well founded in international law—and while obligating arbitration clauses might well prove more useful.

56. There still remained the question of relations between the Authority and States, but that question could not easily be settled before the provisions of the final agreement on the status, functions and powers of the Authority could be studied.

57. His delegation had previously stated that the extension of the width of the territorial sea at the time of the establishment of economic zones merely reflected an anachronistic concern, would place a useless financial burden on the coastal States without contributing to their safety or promoting their economic interests and would create avoidable problems in the field of international navigation. Similarly, his delegation feared that the creative enthusiasm of the Conference might lead to unnecessary innovation and the establishment of a useless, complex, regrettable and expensive judicial superstructure.

58. Mr. PRANDLER (Hungary) said that his delegation disagreed with those delegations which considered that a general debate on the subject of dispute settlement procedures was premature at that stage. Dispute settlement procedures should form an integral part of the over-all package deal which the Conference sought to achieve, and accordingly the elaboration of that part of the convention could not be postponed until the substantive law provisions of the other parts of the convention were settled. At the same time, his delegation agreed with all those who believed that the most important contribution to an effective dispute-settlement procedure would be a well-balanced and carefully worded convention, which should enjoy the support of all parties concerned and which should be adopted by consensus. As the representative of Sri Lanka had emphasized, mutual confidence and co-operation between parties to a dispute were more likely to smooth the way for dispute settlement than the existence of a list of names of conciliation commissioners.

59. The informal single negotiating text contained in document A/CONF.62/WP.9 provided a very useful basis for current and future deliberations. Although based on the generally recognized principle of international law that States should settle their international disputes by peaceful means, the draft was flexible enough to be in conformity with another equally important principle according to which the choice of the methods and means of peaceful settlement should be left to the parties concerned. No State party to a dispute could be forced by a unilateral action of the other party to accept a given procedure without its consent.

60. When effective dispute-settlement procedures were being devised, two major extremes and dangers should be avoided. One danger was to rely too heavily on a strict, unified and comprehensive compulsory settlement procedure. That approach could not claim universal acceptance. As at September 1975, the best known comprehensive compulsory settlement procedure—the acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of its Statute—was being adhered to by only 45 States, many of which recognized that jurisdiction with well-known reservations. There was no evidence to indicate a trend towards the acceptance of such compulsory jurisdiction. The second danger was the inclusion of special provisions which would give the coastal States full exemption concerning "disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention" (A/CONF.62/WP.9, article 18, para. 2*(a)*).

[2] United Nations, *Treaty Series*, vol. 499, p. 311.

61. Representing a land-locked country, his delegation could not accept such an extension of the jurisdiction of coastal States. The rights and duties of all States should be duly balanced and the convention should contain adequate safeguards against the abuse of those rights by any of the contracting parties. For that reason, his delegation could not support the view that in an area outside the territorial sea, "matters in dispute should be kept exclusively within the jurisdiction of the coastal State" (A/CONF.62/WP.9/Add.1, para. 33).

62. His delegation was confident that other significant issues raised in the informal single negotiating text would be fully discussed in the appropriate forum. It had an open mind as regards the exact form and procedure of such a forum, and would accept any feasible proposal.

63. Mr. RASHID (Bangladesh) said that Bangladesh attached great importance to the procedure of dispute settlement, since, as a developing country, it would be depending more and more on the extensive exploitation and exploration of sea resources, which could be carried out only when the interests of countries like Bangladesh were secure and an atmosphere of peace reigned over the ocean.

64. His delegation recognized the need for an effective dispute-settlement machinery to be incorporated into the convention. The stability of the new law of the sea would depend largely on the establishment and effective functioning of a dispute settlement procedure. Such a procedure could not be dissociated from the substantive provisions of the convention.

65. The informal single negotiating text contained in document A/CONF.62/WP.9 envisaged a comprehensive and sometimes over-complicated machinery. His delegation was committed to the principle of the compulsory peaceful settlement of disputes and believed that a mandatory procedure should be incorporated into the convention. Without such a procedure, the value of the convention in the settlement of conflicts resulting from varying interpretations of the law would be greatly diminished. It also believed that a law of the sea tribunal was needed. The creation of such a tribunal would not detract from the role of the International Court of Justice, which would continue to be the principal judicial organ of the United Nations. Submission of disputes only to the International Court did not appear to answer the primary requirements of speed, technical expertise and access to the Court. Just as the International Law Commission and the United Nations Commission on International Trade Law coexisted without detriment to their effectiveness, so could the International Court and the proposed tribunal coexist, and the tribunal should deal with all parts of the convention, not only part I.

66. His delegation remained unconvinced of the need for special procedures. Under the general procedures, technical committees might function in specialized fields. He did not support the mandatory provision for exchange of information and consultation in annex III, and suggested its deletion.

67. While supporting a mandatory procedure for the peaceful settlement of disputes, his delegation favoured flexibility. The parties should be able to select any of the peaceful means set forth in Article 33 of the Charter or any other peaceful means of their choice, but such flexibility should not exempt the State from its primary obligation to resort only to peaceful means. The inadequacy of the 1958 Optional Protocol concerning the compulsory settlement of disputes[3] should not be repeated: the parties should have the option to choose binding procedures without being allowed to opt out entirely.

[3] *Ibid.*, vol. 450, No. 6466, p. 169.

68. With regard to access to the tribunal, his delegation was open-minded. Article 13 of the single negotiating text needed to be examined carefully, since it was likely to give rise to many new intricate situations. His delegation appreciated the concern expressed by delegations with regard to accepting broad jurisdiction in ocean disputes in relation to entities other than States.

69. One of the most difficult issues was related to possible general limitations on the jurisdiction of the dispute settlement machinery. His delegation appreciated the importance which some delegations attached to the exercise by States of exclusive jurisdiction over resources within national jurisdiction; it believed, however, that the exceptions might not be so many as to jeopardize the settlement procedure, and that article 18 of the single negotiating text needed to be examined in the light of paragraph 32 of the President's memorandum (A/CONF.62/WP.9/Add.1).

Mr. Mwangaguhunga (Uganda), Vice-President, took the Chair.

70. Mr. JUSUF (Indonesia) said that his delegation's position on the question of the settlement of disputes depended largely on the nature of the compromises to be achieved in the final text on the convention, since questions of sovereignty and security were his country's primary concern. If its basic interests were taken into account in the final text, it would be able to consider stronger dispute-settlement provisions. At the current stage, however, his delegation was unable to express a more definite view.

71. His country had not yet accepted the compulsory jurisdiction of the International Court of Justice or any other compulsory arbitral procedures except in certain specific cases of arbitration to which it had expressly agreed. In general, his country resorted to consultation for the settlement of disputes. It felt that the procedures set forth in Article 33 of the Charter were generally acceptable. Its basic approach was aimed at preventing disputes from arising, and it had done its best to settle questions relating to territorial and marine boundaries in a neighbourly manner and to the satisfaction of all parties.

72. The Association of South-East Asian Nations had established machinery for the peaceful settlement of disputes, and disputes concerning the law of the sea could also be resolved through that machinery. While it preferred regional machinery for such purposes, his delegation did not rule out the use of other means. Provided its economic interests were not affected, and subject to a consensus in the Group of 77, his country could agree to the compulsory jurisdiction of the proposed tribunal with regard to the international area in cases relating to contractual arrangements or operations. His delegation also shared the view that the settlement of disputes could be regulated in an optional protocol.

73. With regard to part IV of the single negotiating text (A/CONF.62/WP.9), his delegation was unable to state its position in greater detail, mainly because of the uncertain outcome of negotiations, and because that text was still being studied by his delegation.

74. Mr. FALCÓN BRICEÑO (Venezuela) noted that, in beginning the debate on the settlement of disputes, delegations did not have before them documentation reflecting even the main trends concerning that question. The paper submitted by the informal working group on the settlement of disputes reflected the views of the three co-Chairmen of the group in the light of the discussions which were held by the group during the Caracas and Geneva sessions. While it was a valuable adjunct to consideration of the item, its authors had never claimed that it reflected the whole range of positions of States participating in the Conference, still less a body of rules approved by the working group.

75. The Conference had decided at the previous session to entrust the Chairmen of the three Committees with the preparation of single texts relating to each of the items within their competence, but it had not taken the same decision with regard to the settlement of disputes, a question that had not yet been discussed. Document A/CONF.62/WP.9 was therefore only one element that could assist the group that should be established for the purpose of preparing a text to serve as the basis for future negotiations on that item. That document, and the paper prepared by the informal working group, were merely working instruments that could be approved by delegations to the extent that they deemed appropriate. His delegation, for its part, was prepared to contribute to the study of peaceful means for the settlement of disputes relating to the interpretation and implementation of the future convention.

76. His country's Constitution stipulated that any international agreement concluded by Venezuela must contain a clause whereby the parties undertook to settle, through peaceful means recognized by international law or previously agreed upon by them, disputes that might arise relating to the interpretation or application of the agreement. Furthermore, it had accepted the principles concerning the peaceful settlement of disputes laid down in the Charter of the United Nations and in that of the Organization of American States.

77. Furthermore, Venezuela had signed and ratified without reservations various global and regional conventions providing for peaceful means of settling disputes, including the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas[4] and the 1954 International Convention for the Prevention of Pollution of the Sea by Oil.[5]

78. The best means of settling disputes involving sovereignty, security and national defence was negotiation among the parties concerned. His delegation could therefore not accept any procedure, involving the participation of third parties, which might lead at any stage of the dispute to a decision binding on the States parties in the case of disputes involving such matters. His delegation accordingly supported the provisions of article 18, paragraph 2, of document A/CONF.62/WP.9.

79. It believed that there was no need to establish a special tribunal for the settlement of disputes relating to the interpretation or application of the convention, since such functions could be exercised by the International Court of Justice. It would not, however, oppose the establishment of such a body, if the majority desired it. On the other hand, it would be appropriate to establish a tribunal that would deal with disputes arising from the exploration and exploitation of the resources of the international area.

80. His delegation had reservations regarding certain solutions proposed in the documents to which he had referred earlier, particularly with respect to preventive measures and advisory opinions. Those questions, and certain others, needed to be studied in depth.

81. Mr. BAJA (Philippines) said that his country had always been committed to the provisions of Article 2, paragraph 3, of the Charter of the United Nations, which enjoined all Member States to settle their international disputes in such a manner that international peace and security and justice were not endangered. His delegation therefore supported efforts to provide for a peaceful settlement of disputes in a future convention.

82. Prior agreement to accept third-party procedures for the settlement of disputes would provide a valuable means of lowering the temperature of a dispute. Such an agreement would also establish a more or less permanent structure of international relations and would serve as a safety-valve against internal repercussions if the outcome of a particular settlement procedure did not meet expectations. The advantages of such a system could not be more pronounced than in the future convention, which was expected to be composed of delicate compromises, of provisions which, as the representative of France had aptly observed, were being conceived with deliberate ambiguity.

83. It was remarkable to note the reluctance, even the failure, of Governments to use available means for the peaceful settlement of disputes. In most cases, a solution of the dispute was probably better for the State concerned than the prolongation of the dispute.

84. Two important factors might militate against the settlement of disputes through third-party procedures. The first was, rightly or wrongly, the lack of confidence in the adequacy, effectiveness and impartiality of available procedures. The second involved State sovereignty. Governments understandably preferred to keep control of any eventual settlement. The fundamental problem was to persuade them of the advantages of having recourse to various institutions and procedures for the settlement of disputes. Such obstacles must be removed before dispute settlement procedures and machinery were established.

85. His delegation wished to express some preliminary views on the settlement of disputes. First, a dispute settlement system should form an integral part of the future convention. Secondly, to be effective, it should include compulsory jurisdiction leading to a binding decision by the jurisdictional organ concerned. Thirdly, the scope of the dispute settlement machinery should be as broad as politically possible; it should, however, assume a role that did no more than supplement traditional and direct bilateral negotiations, as in the case of the Association of South-East Asian Nations. Fourthly, acceptance of compulsory jurisdiction would require sufficient assurances that a State's vital interests were adequately safeguarded, since acceptance of compulsory third-party procedures derogated, however subtly, from State sovereignty. Article 18 of document A/CONF.62/WP.9 was one safeguard. On the other hand, there was a need for precision with regard to exceptions and reservations: they should not be so broad or so numerous as to negate the concept of compulsory jurisdiction. Fifthly, it might be too early to consider the so-called functional approach or special procedures. Since those concepts covered areas and subjects concerned more with national jurisdiction, wide acceptance was much more difficult to attain. Special procedures might also open the door to a proliferation of dispute settlement mechanisms and competing jurisdictions. There was no strong reason, however, why such procedures should not find a place in a general or comprehensive dispute-settlement system. Sixthly, access to the system should generally be limited to States. If individuals and organizations were granted access on the same footing as States, it might constitute an obstacle to wider acceptance of the system. That should not, however, be a hard and fast rule: it should be possible, especially in matters involving the international area, for parties other than States to avail themselves of the dispute system. Seventhly, the progressive development of the law of the sea should entail a corresponding development of the dispute system. If the procedures were not adequate, or adequately applied, there was a danger that the progressive development of the law would only lead to the same number of disputes. His delegation viewed with favour the proposal to establish a special sea-bed tribunal as one of the institutions for the settlement of disputes involving matters relating to the international area. However, the establishment of new dis-

[4] *Ibid.*, vol. 559, p. 285.
[5] *Ibid.*, vol. 327, p. 3.

pute-settlement machinery should be undertaken only when existing mechanisms were inadequate and when the new jurisdictional procedure for machinery could command wide acceptance. The International Court of Justice still had considerable capacity for the peaceful settlement of disputes.

86. A dispute settlement system would command universal acceptance only when the substantive provisions were clear and settled. Acceptance of a particular dispute system would depend on the outcome of discussions in the three Committees. His delegation believed, however, that the valuable work started on the subject of the settlement of disputes should continue, and it would co-operate in existing arrangements on the subject as well as in other systematic, broadly representative and practical work in that regard.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

87. Mr. LUPINACCI (Uruguay) said that his delegation supported the adoption of provisions for the establishment of a system for the peaceful settlement of disputes relating to the interpretation or application of the future convention. Support for such a system was in line with the unswerving attitude which Uruguay had adopted in many international and regional forums. That policy had been given practical expression in the conclusion of bilateral treaties of arbitration and the signature in 1921 of the optional clause of the Statute of the Permanent Court of International Justice. He wished especially to recall that the 1948 Pact of Bogotá, in the preparation of which a Uruguayan jurist had participated, had provided the most complete international instrument known on that subject, placing inter-American regional law in the forefront of the legal preservation of peace. The treaty, signed in 1973 by Uruguay and Argentina, relating to their common boundaries had also established a system for the peaceful settlement of disputes, prescribing conciliatory stages and, in the case of lack of agreement, providing for recourse to the International Court of Justice. Thus, Uruguay's position was consistent with its traditional policy on the subject.

88. First, it was necessary to establish the principle of compulsory peaceful settlement of all disputes that might arise between parties to the future convention. Secondly, the principle of the freedom of the parties in the choice and application of the settlement procedures should prevail. The free and effective agreement of the parties in selecting the procedure would undoubtedly facilitate a successful outcome of the dispute. In the absence of such an outcome, however, or if there was no agreement on the selection of the peaceful means, the system should provide procedures to which any of the parties could have recourse in order to seek a peaceful solution.

89. A dispute should be submitted to a conciliatory, not a jurisdictional, body, before recourse was had to an arbitrator or a judge. The functioning of the system must make it possible for any controversy to be settled. The system must therefore be both complete and dynamic in its procedures, with set stages and with full guarantees to the parties in the exercise of their rights. At the same time, it was necessary to preclude the possibility of the overlapping of procedures, by ensuring that the timing of the various stages was adhered to. Only when a procedure failed should the next procedure be instituted.

90. Such procedures must be prescribed in a precise form, guaranteeing equality of the parties and providing them with sufficient flexibility but with clear time-limits. Such a system should culminate in the submission of a settlement that had not been resolved by diplomatic or conciliatory procedures for a judicial decision. The system must have a jurisdictional basis, so that any dispute could eventually be settled in accordance with the law, or also *ex aequo et bono* if the parties so agreed, by the compulsory decision of a tribunal.

91. It would be pointless to establish a technically comprehensive system if it was subsequently to be rendered ineffective by reservations with regard to the application of jurisdictional procedures or specific types of disputes involving serious threats to the peace. Some reservations must be allowed, if only to make it politically feasible for the largest possible number of States to ratify the provisions in question, but care must be taken to avoid constructing an apparently stable edifice that was in fact basically unsound. Neither was it tolerable for certain States to profess support for a system of peaceful settlement of disputes when, in reality, they were merely prepared to submit to non-compulsory procedures the settlement of minor disputes with other States.

92. His delegation was not retreating from a position of full respect for the sovereignty of States, but was in fact supporting the establishment of an international legal order enabling equal sovereign States to live together in justice and peace. Within that framework, it would be possible to exclude the submission, at least to certain procedures, of disputes that might arise in the exercise by a coastal State of its discretional powers under the convention.

93. With regard to jurisdictional procedures, his delegation considered that the proliferation of tribunals or judicial organs would create various difficulties, although it was necessary to recognize the existence of basically different situations, particularly in the case of the international area as compared with the other maritime or sea-bed areas, whether or not subject to national jurisdiction.

94. The establishment of the proposed law of the sea tribunal, along the lines of the International Court of Justice, required proper justification. The principal innovation lay in the possibility of access to the tribunal being extended to entities other than States, namely, territories participating in the Conference as observers, intergovernmental organizations and natural and juridical persons, on an equal footing with States parties to the convention.

95. His delegation radically disagreed with any formula that might mean giving *locus standi* to international organizations or natural or juridical persons before the law of the sea tribunal or any other tribunal in matters relating to rights, powers or activities exercised by States in any part of the sea or to incidents or situations occurring within the territorial sea, the economic zone or the continental shelf.

96. The only exception should concern the activities of the International Sea-bed Authority. The different circumstances of the international area justified a situation where such entities or persons, after fulfilling certain requirements, could be parties to cases submitted to a jurisdictional procedure with regard to activities in the international area, when such cases were expressly provided for in the convention or in other international instruments accepted by the parties to the dispute.

97. While the establishment of a tribunal in connexion with the international area should be given every consideration, his delegation was opposed to granting access to the tribunal to those entities or persons on an equal footing with States in matters relating to the rights, powers or activities of States or to incidents or situations occurring, or having an effect, in areas under national jurisdiction. Such entities or persons should have recourse to competent national tribunals and, when internal remedies were exhausted, the general principles concerning diplomatic protection and international responsibility of States should be applied.

98. While his delegation was favourably disposed in principle towards the establishment of a law of the sea tribunal for the settlement of disputes relating to the international area,

other questions relating to the interpretation and application of the convention should be submitted to the International Court of Justice, whose Statute was sufficiently flexible to enable it to perform such a function.

99. On that basis, his delegation would co-operate in a spirit of compromise in the preparation of a text on the settlement of disputes, which it considered part and parcel of the new law of the sea.

The meeting rose at 1.05 p.m.

63rd meeting

Thursday, 8 April 1976, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that an additional non-governmental organization in consultative status with the Economic and Social Council, namely the Commission to Study the Organization of Peace, had expressed interest in attending the Conference as an observer. The request would be approved under rule 66 of the rules of procedure if there was no objection.

It was so decided.

Mr. Saidvaziri (Iran), Vice-President, took the Chair.

Settlement of disputes (*continued*) (A/CONF.62/WP.8,[1] WP.9 and Add.1)

2. Mr. AKRUM (Surinam) said that his delegation was in agreement with the addendum to the informal single negotiating text on the settlement of disputes (A/CONF.62/WP.9/Add.1). The dispute settlement system contained therein was comprehensive because it covered disputes which might arise from any use of the ocean and disputes between States and juridical persons. It also affected international as well as national ocean space and the functions and structure of all the major intergovernmental organizations dealing with the use of ocean space and its resources. It was therefore a model for the kind of ocean management structure that eventually had to emerge if the vast resources of the oceans were to be utilized for the benefit of all countries.

3. With regard to specific aspects of that document, his delegation shared the preference of the Group of 77 for general procedures as opposed to functional or special ones, while realizing that the system must be flexible enough to accommodate the many special issues that might arise. Disputes should be settled at the level and in the area they affected, and new ways of combining functional and general principles were needed. The provision that the general procedure would automatically prevail when parties to a dispute disagreed as to the tribunal to be chosen seemed satisfactory.

4. His delegation also shared the preference of the Group of 77 for a new law of the sea tribunal as opposed to the International Court of Justice, since it would ensure a larger role for the developing countries. The election of the judges should be based on the equality of sovereign States as expressed in the one-State, one-vote system, without discrimination of any kind, and the number of judges should be equitably divided among the various regions. The law of the sea tribunal should have preference in case of disagreement between the parties concerned as to the appropriate forum.

5. The special meeting of States to elect the judges was extremely important because it could also periodically review the general situation arising from the convention, and, specifically, the situation with regard to its observance, thus providing the kind of continuity which was essential for such a complex and novel treaty. His delegation therefore supported the proposal made by the delegation of Sri Lanka at the 59th meeting.

6. Finally, his delegation favoured establishing a special organ of the Conference to deal with the elaboration and negotiation of part IV of the single negotiating text and felt that such an organ should have a legal status and responsibility equal to that of the other main Committees of the Conference. Such a body would not only offer the most efficient way of concluding the work on part IV but would also ensure unity of purpose and comprehensiveness of basic perspectives.

7. Mr. ABUL-KHEIR (Egypt) said that an effective system for the settlement of disputes had to be included in the convention. A special committee should be established to work out details regarding the selection of methods in accordance with Article 33 of the Charter of the United Nations. His delegation favoured negotiation, conciliation and arbitration. Those devices should be available to everyone, and there should be complete freedom of choice of methods by the parties concerned.

8. Where it was necessary to resort to international jurisdiction, uniformity should replace the proliferation of various jurisdictions.

9. Three kinds of questions would arise under the convention: questions regarding the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; traditional questions covered by international law; and questions relating to the national jurisdiction of coastal States.

10. With respect to the first question, the protection of a common patrimony required special rules and special jurisdiction independent of the Authority, and his delegation was therefore in favour of a special tribunal. Organizations with observer status as well as national liberation movements should have access to such a tribunal. With regard to the second question, his delegation was opposed to the proliferation of jurisdictions. The International Court of Justice would be competent if the parties agreed, but a special chamber should be established within the Court to deal with such disputes and judges should be determined on an *ad hoc* basis. Special procedures could be employed for specific technical matters such as fisheries, pollution and scientific research.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.63

63rd Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

other questions relating to the interpretation and application of the convention should be submitted to the International Court of Justice, whose Statute was sufficiently flexible to enable it to perform such a function.

99. On that basis, his delegation would co-operate in a spirit of compromise in the preparation of a text on the settlement of disputes, which it considered part and parcel of the new law of the sea.

The meeting rose at 1.05 p.m.

63rd meeting

Thursday, 8 April 1976, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that an additional non-governmental organization in consultative status with the Economic and Social Council, namely the Commission to Study the Organization of Peace, had expressed interest in attending the Conference as an observer. The request would be approved under rule 66 of the rules of procedure if there was no objection.

It was so decided.

Mr. Saidvaziri (Iran), Vice-President, took the Chair.

Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add.1)

2. Mr. AKRUM (Surinam) said that his delegation was in agreement with the addendum to the informal single negotiating text on the settlement of disputes (A/CONF.62/WP.9/Add.1). The dispute settlement system contained therein was comprehensive because it covered disputes which might arise from any use of the ocean and disputes between States and juridical persons. It also affected international as well as national ocean space and the functions and structure of all the major intergovernmental organizations dealing with the use of ocean space and its resources. It was therefore a model for the kind of ocean management structure that eventually had to emerge if the vast resources of the oceans were to be utilized for the benefit of all countries.

3. With regard to specific aspects of that document, his delegation shared the preference of the Group of 77 for general procedures as opposed to functional or special ones, while realizing that the system must be flexible enough to accommodate the many special issues that might arise. Disputes should be settled at the level and in the area they affected, and new ways of combining functional and general principles were needed. The provision that the general procedure would automatically prevail when parties to a dispute disagreed as to the tribunal to be chosen seemed satisfactory.

4. His delegation also shared the preference of the Group of 77 for a new law of the sea tribunal as opposed to the International Court of Justice, since it would ensure a larger role for the developing countries. The election of the judges should be based on the equality of sovereign States as expressed in the one-State, one-vote system, without discrimination of any kind, and the number of judges should be equitably divided among the various regions. The law of the sea tribunal should have preference in case of disagreement between the parties concerned as to the appropriate forum.

5. The special meeting of States to elect the judges was extremely important because it could also periodically review the general situation arising from the convention, and, specifically, the situation with regard to its observance, thus providing the kind of continuity which was essential for such a complex and novel treaty. His delegation therefore supported the proposal made by the delegation of Sri Lanka at the 59th meeting.

6. Finally, his delegation favoured establishing a special organ of the Conference to deal with the elaboration and negotiation of part IV of the single negotiating text and felt that such an organ should have a legal status and responsibility equal to that of the other main Committees of the Conference. Such a body would not only offer the most efficient way of concluding the work on part IV but would also ensure unity of purpose and comprehensiveness of basic perspectives.

7. Mr. ABUL-KHEIR (Egypt) said that an effective system for the settlement of disputes had to be included in the convention. A special committee should be established to work out details regarding the selection of methods in accordance with Article 33 of the Charter of the United Nations. His delegation favoured negotiation, conciliation and arbitration. Those devices should be available to everyone, and there should be complete freedom of choice of methods by the parties concerned.

8. Where it was necessary to resort to international jurisdiction, uniformity should replace the proliferation of various jurisdictions.

9. Three kinds of questions would arise under the convention: questions regarding the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; traditional questions covered by international law; and questions relating to the national jurisdiction of coastal States.

10. With respect to the first question, the protection of a common patrimony required special rules and special jurisdiction independent of the Authority, and his delegation was therefore in favour of a special tribunal. Organizations with observer status as well as national liberation movements should have access to such a tribunal. With regard to the second question, his delegation was opposed to the proliferation of jurisdictions. The International Court of Justice would be competent if the parties agreed, but a special chamber should be established within the Court to deal with such disputes and judges should be determined on an *ad hoc* basis. Special procedures could be employed for specific technical matters such as fisheries, pollution and scientific research.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

11. It was especially important to safeguard the right to self-determination of Territories not yet independent. Such Territories and their national liberation movements had to be ensured their proper share of the patrimony of humanity.

12. Mr. SIBAHI (Syrian Arab Republic) said that the informal single negotiating text contained in document A/CONF.62/WP.9 and Add.1 was a broad initiative reflecting the importance which the three main Committees attached to the subjects and issues dealt with in it.

13. The international convention on the law of the sea and similar instruments should promote co-operation between the developed and developing countries and ensure the equitable distribution of income deriving from areas outside national jurisdiction. They should provide for the transfer of technology to developing countries in order to remedy the present inequitable international situation in the wider interests of world peace.

14. His delegation supported the Arab community and the developing countries with respect to the guiding principles of the convention. It wished to emphasize, however, that the settlement of disputes should be flexible. Recourse to arbitration and legal procedures should be a last resort where conciliation and diplomacy had failed. It was also important to allow for the free choice of methods depending upon the nature of the dispute and with due regard for national sovereignty. His delegation supported the Law of the Sea Tribunal because the disputes likely to arise would involve technical and scientific as well as legal considerations and the judges therefore required both types of competence. Access to the Tribunal should be limited to Member States, intergovernmental organizations, organizations with observer status and national liberation movements. Other organizations should entrust their case to the State or States of which they were nationals. National courts should have jurisdiction within national maritime zones. In the specific matters of fisheries, pollution and scientific research, recourse to specialized bodies might be necessary.

15. Since the matter of dispute settlement would be considered by the three Main Committees, his delegation favoured the establishment of an *ad hoc* sub-committee to co-operate with them in their work and present the views expressed in the plenary Conference.

Miss Chibesakunda (Zambia), Vice-President, took the Chair.

16. Mr. MALLA (Nepal) said that it would facilitate the work of the Conference to discuss and negotiate both the substantive and procedural parts of the proposed convention side by side. His delegation welcomed the presentation of part IV of the informal single negotiating text (A/CONF.62/WP.9) as a basis for negotiation.

17. His country attached great importance to the peaceful settlement of disputes arising out of ocean uses and boundary disputes and felt that a comprehensive, effective and impartial dispute-settlement procedure must form an integral part of the proposed convention. An optional protocol would not be sufficient. Where negotiation or conciliation had failed, a choice of procedures, which could be general or residual and specialized or functional, for binding settlement must be available. In addition to States and the International Sea-bed Authority, other entities with rights and obligations in the marine area under question should also have access to the dispute-settlement procedure.

18. His delegation supported the establishment of the law of the sea tribunal as the primary juridical organ of the International Sea-bed Authority and felt that its composition should reflect the new international legal order. It wished to express reservations regarding article 14, paragraph 1, and article 18 of document A/CONF.62/WP.9. The exceptions provided in article 18 were too wide and sweeping and if left unchanged would make the compulsory settlement of disputes ineffective, thereby undermining the convention as a whole. Rights were never legal rights unless they were legally protected rights. Hence, the rights of other nations or of the international community should never be left to the unilateral interpretation of an interested party. In that connexion, his delegation could not agree with the view expressed in paragraph 33 but did share those expressed in paragraphs 6, 9, 13 and 25 of document A/CONF.62/WP.9/Add.1.

19. Mr. MAHMOOD (Pakistan) said that the best way to minimize the occurrence of disputes was to make the proposed convention as clear and unambiguous as possible. In article 45 of part II of the single negotiating text (see A/CONF.62/WP.8), the coastal State jurisdiction in the exclusive economic zone had been categorized into four types: "sovereign rights", "exclusive rights and jurisdiction", "exclusive jurisdiction" and "jurisdiction". Such a multiplicity of imprecise terms would lead to different understandings on the part of States and would baffle any judicial body entrusted with interpreting them.

20. Although the possibility of disputes could not be eliminated altogether, when they did arise it was the obligation of the parties concerned to seek a solution by the peaceful means enumerated in Article 33 of the Charter of the United Nations.

21. With regard to the settlement of disputes relating to the international sea-bed area, his delegation supported the establishment of a law of the sea tribunal, the main function of which would be to adjudicate on matters relating to the exploration and exploitation of the international sea-bed area, including contracts and arrangements entered into for that purpose. However, the Tribunal should not be given a role which would detract from the Authority's position as the supreme depository of all powers relating to that area. Disputes relating to zones and areas under the exclusive sovereign jurisdiction of the coastal State fell exclusively under the jurisdiction of the coastal State concerned and should be dealt with under the judicial system of that State. With regard to disputes not relating to the coastal State's jurisdiction, his delegation believed that, rather than set up a new law of the sea tribunal to deal with such matters, it would be preferable to explore all possibilities with a view to making full use of the potential of the International Court of Justice. The latter had the capacity and the flexibility to develop institutions and procedures to deal with questions arising from the convention. It could, for example, as had already been suggested, form different chambers to deal with such specialized questions as fisheries, scientific research and pollution in areas beyond national jurisdiction. It could also take expert advice from specialized bodies. The jurisdiction of the body responsible for settling such disputes—whether it be the International Court of Justice or the law of the sea tribunal—should be compulsory, since only in that way could the system be made effective.

22. Mr. PARDO (International Ocean Institute), speaking at the invitation of the President, said that, although document A/CONF.62/WP.9 had great merit, a number of points required further consideration and possibly modification. Among such points were the unclear relationship between the tribunal of the Authority, as contemplated in part I of document A/CONF.62/WP.8, and the law of the sea tribunal; the complexity of the procedural arrangements contemplated in document A/CONF.62/WP.9; and some of the provisions of article 18 in the latter, which in practice might largely nullify the effectiveness of the proposed dispute settlement system. The effectiveness of the system established by the Conference would depend not only on the perfection of its formal structure but also on whether it took realistic account of the current nature of international society. Account must also be taken of the substantive provi-

sions of the law which the dispute settlement system would serve and of the possibility of ensuring the impartiality of the arbitral or judicial organs responsible for applying or interpreting the law.

23. The essence of the emerging law of the sea would be largely a political compromise between perceived national interests, couched in legal language. Since there were fundamental divergences with regard to perceived national interests among States on a number of important questions, such compromises could sometimes be reached only by deliberate ambiguity of language. In such circumstances, consistency of interpretation could only be legitimately expected from judges with knowledge of the understandings which had formed the basis of the compromises. Consequently, rather than establish formal dispute-settlement procedures of a legal nature, it might be more useful to create a continuing body composed of all States Parties to the convention, capable of overseeing its implementation and of giving authoritative interpretations of such political compromises.

24. Another major short-coming of the text was the contradictory nature of important provisions included in document A/CONF.62/WP.8. It was to be hoped that obvious contradictions would be eliminated from the final text, since few judges were able to reconcile directly contradictory provisions in a convincing manner.

25. Many provisions in all three parts of that document were extremely vague. An example was the very general criteria for delimitation. Since the breadth of the exclusive economic zone was based on the criterion of distance from appropriate straight baselines while that of the legal continental shelf was based on the totally different criterion of natural prolongation of the land mass, complicated situations could arise in which the legal continental shelf of one State lay under the exclusive economic zone of another. Compulsory and binding dispute settlement procedures might not be the most appropriate settlement method when the law and the criteria on which it was based were so vague as to make any decision in some measure arbitrary. Document A/CONF.62/WP.9 in fact foresaw that kind of difficulty by making judicial dispute-settlement measures only the last resort. In other instances, the amount of detail in provisions of the proposed convention might cause difficulty. A case in point was article 50, paragraph 3, in part II of document A/CONF.62/WP.8, which imposed on the coastal State the obligation of taking measures based on such a large number of varied considerations that, in practice, some would have to be ignored.

26. Another example of vagueness related to the concept of reasonable exercise by a State of its rights, which was fundamental to both traditional and emerging law of the sea. Reasonable exercise of rights could not be judicially interpreted when no criteria of reasonableness were given in the law. For example, every State had the right to draw straight baselines from which the breadth of marine areas under national sovereignty or jurisdiction was measured. How long did such a baseline have to be for the action of the coastal State to be considered unreasonable?

27. Document A/CONF.62/WP.8 also contained serious lacunae. Military activities, exclusively for peaceful purposes, in the marine environment interacted with other uses of ocean space. A dangerous category of potential disputes could perhaps be avoided in part through some clarification of the legal status of foreign military activities in national jurisdiction areas. Parts II and III of the document, while stressing the rights and competences of the coastal States, showed less concern for the achievement of international equity or for the development of those effective measures of close international co-operation which were so desperately required for the management of ocean space resources and the harmonization of inc usive and exclusive uses of the seas. Finally, the document as a whole looked to past rather than future uses of ocean space. For example, future developments in industrial farming of ocean space would require early and radical revision of many provisions included in the single negotiating text.

28. Assured impartiality on the part of organs charged with implementing binding dispute-settlement procedures was essential. Without such impartiality, it would be difficult to achieve consistency in adjudications and to secure the international support necessary for full implementation of a settlement system. Consequently, it was perhaps unfortunate that the Statute of the Law of the Sea Tribunal proposed that members of the Tribunal should be elected in accordance with a geographic pattern. A more appropriate procedure might be to seek a continuing balance of interests rather than one of geographic regions.

29. In view of the current nature of international law and society, of the grave uncertainties and obsolescent nature of document A/CONF.62/WP.8 and of the doubtful impartiality of the proposed tribunal, a compulsory and binding dispute-settlement system might be excessively innovative. Nor would replacement of the law of the sea tribunal by the International Court of Justice change the situation.

30. If the excessively vague or inadequate provisions contained in document A/CONF.62/WP.8 were not changed substantially in the final text of the convention, the dispute settlement system currently envisaged might be too advanced for the context in which it was to operate and might itself become an object of serious dispute or not be fully or impartially implemented. That did not mean, however, that the Conference should not affirm the obligation of contracting parties to settle any dispute relating to the interpretation or application of the future convention through the peaceful means referred to in Article 33 of the Charter of the United Nations or through other peaceful means of their choice. Provisions for the exchange of information, for consultation, for impartial fact-finding and for conciliation procedures would be very constructive, as would binding arbitration procedures for certain categories of disputes where the underlying law was reasonably clear and where differences concerned clearly technical matters.

31. A tribunal for binding adjudication of disputes was clearly required, and it was equitable that persons or entities other than States should be afforded access to such a tribunal. With some further clarification of the provisions contained in part I of document A/CONF.62/WP.8, the proposed tribunal could also be entrusted with the authoritative interpretation of that part of the convention. The whole system could be completed by the creation of the continuing body to which he had already referred. To attempt more might be counterproductive.

32. If, on the other hand, the more serious inequities, uncertainties and built-in obsolescence of the provisions contained in document A/CONF.62/WP.8 were eliminated from the final text, the prospects for the viability of the proposed convention would be considerably improved, thus justifying an attempt to create a compulsory and binding dispute-settlement system on the lines proposed in document A/CONF.62/WP.9. It was not yet too late for the great majority of States to reconcile their basic approaches to the law of the sea within an equitable legal framework which, while taking full account of inevitable developments in uses of ocean space, would also be conducive to the attainment of highly desirable general goals such as reduction of world tensions, reduction of inequality between States, co-operative resource management and development, and control of dangerous technologies. In that wider framework, due

consideration should be given to relating the new law of the sea to efforts to create a new international economic order and to restructure the existing United Nations system. Within such a framework, a flexible, compulsory and binding dispute-settlement system with wide application would be an essential part of a new order in ocean space.

The meeting rose at 11.45 a.m.

64th meeting

Friday, 9 April 1976, at 10.20 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Addition to the list of non-governmental organizations

1. The PRESIDENT announced that the Center for Inter-American Relations, a non-governmental organization in consultative status with the Economic and Social Council, had requested permission to participate in the Conference as an observer. If he heard no objection, he would assume that the Conference wished to grant permission in accordance with rule 66 of the rules of procedure.

It was so decided.

Settlement of disputes (*continued*) (A/CONF.62/WP.8,[1] WP.9 and Add.1)

2. Mr. KWON MIN JUN (Democratic People's Republic of Korea) said that his country had consistently upheld in its international relations the principles of complete equality, independence, mutual respect, non-interference in internal affairs and mutual benefit. Accordingly, all disputes arising from the interpretation and application of the law of the sea should be resolved only on the basis of independence and equality between the parties concerned, through negotiations and consultations aimed in particular at protecting the sovereignty of the developing countries.

3. Disputes arising in the areas within national jurisdiction must be resolved in accordance with national laws and regulations, and the question whether a dispute should be subject to the jurisdiction of an international judicial organ should be decided on a voluntary basis and by agreement between the parties. The Conference should therefore not formulate any provisions that might impose unconditional acceptance by the parties of the jurisdiction of such an organ.

4. The procedures adopted for the settlement of disputes should reflect the just demand of the great majority of States that the old international economic order which had served the interests of the imperialist and colonialist maritime Powers should give way to a new international economic order appropriate to the contemporary world.

5. Mr. COSTELLO (Ireland) said that, while agreement on dispute settlement procedures would not automatically produce an agreed convention, disagreement might well indicate the futility of further effort. The procedures must be comprehensive and as simple and inexpensive as possible, and must permit speedy decision and interim relief. They must be compulsory and decisions must be binding; exceptions must be minimal.

6. His delegation was firmly convinced that States should be encouraged to settle their disputes amicably, and accordingly welcomed the availability of a variety of procedures before recourse was had to a tribunal. He therefore welcomed the conciliation procedure put forward in article 7 and annex IA of document A/CONF.62/WP.9 and the provision for the exchange of information and consultation in annex III.

7. However, failure to reach an agreed solution must lead to mandatory independent adjudication resulting in a binding decision. At the adjudication stage, there should be an adequate range of choice, so that a State was not compelled to submit to the binding decision of an organ in which it lacked confidence. The President's text was also helpful in permitting States to opt for regional arrangements or, in the wider context, arbitration or the International Court of Justice. Where the parties concerned had not taken up any of those options, the jurisdiction devolved on the proposed Law of the Sea Tribunal. Perhaps that range of choices might be made even more acceptable if the option of the defendant, rather than the common option of all parties, were to be decisive with regard to the forum having jurisdiction.

8. Clearly there was a need for special procedures for the settlement of certain categories of disputes, particularly on some questions relating to fisheries, pollution, scientific research and the contractual relations arising from exploration and exploitation of the international sea-bed area. Such issues were likely to be of a technical and scientific rather than a legal and political nature, and would therefore require technical expertise and frequently a speedy settlement. Because of the nature of the issues, the decisions reached should not normally be subject to appeal. However, the limited provision for appeal set forth in paragraphs 3 and 4 of article 10 of the President's text would act as a safeguard against uncertainty and even serious injustice.

9. With regard to general procedures, his delegation had doubts about the establishment of the proposed law of the sea tribunal along the lines of the International Court of Justice, and questioned whether the extra cost could be justified. He was aware that many countries lacked confidence in the Court and in its interpretation and application of a body of international law which they felt had been largely formulated without their participation. However, such misgivings might not justify entrusting the interpretation and application of the future convention to another largely similar tribunal. On the other hand, the jurisdiction of the Court was limited, particularly with regard to the parties having access to it, and a new tribunal could be better tailored to perform the particular task to be entrusted to it. If a significant number of delegations regarded such a tribunal as an essential part of dispute settlement procedures, his delegation would not oppose its establishment.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

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64th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

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7. However, failure to reach an agreed solution must lead to mandatory independent adjudication resulting in a binding decision. At the adjudication stage, there should be an adequate range of choice, so that a State was not compelled to submit to the binding decision of an organ in which it lacked confidence. The President's text was also helpful in permitting States to opt for regional arrangements or, in the wider context, arbitration or the International Court of Justice. Where the parties concerned had not taken up any of those options, the jurisdiction devolved on the proposed Law of the Sea Tribunal. Perhaps that range of choices might be made even more acceptable if the option of the defendant, rather than the common option of all parties, were to be decisive with regard to the forum having jurisdiction.

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10. The Conference should not hesitate to discard or modify the traditional concept whereby access to international tribunals had been confined to States. Under certain circumstances, failure to provide for an individual's right of access could do an injustice. Furthermore, if an appeal to the tribunal was established from any special settlement procedures which might be created in the convention, it would be necessary to provide for access to the Tribunal for both natural and juridical persons in respect of disputes in which they might be involved. Experience would suggest that apprehensions concerning such a jurisdiction were not warranted.

11. In addition, it would appear to be highly desirable that the proposed International Sea-bed Authority should have access to any tribunal that might be established with jurisdiction in relation to part I of the informal single negotiating text (see A/CONF.62/WP.8). Furthermore, an international organization, such as the European Economic Community, might itself have competence in areas covered by the convention and should have right of access in such cases.

12. In order to achieve general agreement on the settlement procedures, it might be necessary to permit certain minimal exceptions. In his delegation's view, those proposed in article 18 of document A/CONF.62/WP.9 were too broad. Since the convention would contain many new laws of universal application, it was desirable to ensure confidence in them by providing fair procedures for the settlement of disputes. Difficulties would no doubt arise in relation to the interpretation and application of the convention, and compulsory recourse to an established binding procedure should be considered in the interests of all States.

13. The procedures must ensure an expeditious, fair and inexpensive settlement. In that connexion, the traditional rule of international law relating to the exhaustion of domestic remedies might be excluded or modified. That rule, while based on concepts of sovereignty, was one on which in practice States might not be able to rely in many disputes and which could result in delays and indeed injustice. Its modification would not weaken the legitimate rights of the parties, but its retention might be harmful to the proper working of the settlement procedures.

14. Further, more detailed discussion on the settlement of disputes should be undertaken in an official forum of the Conference in which all delegations could participate. He would prefer such discussions to commence as soon as possible, but appreciated that smaller delegations might not yet be able to undertake that extra burden. He was satisfied that the President would make a timely and appropriate arrangement for a thorough examination of the question.

15. Mr. OMAR (Libyan Arab Republic) said that detailed dispute-settlement procedures could not be formulated at the current stage, since they were closely related to the substantive provisions of the convention. Commenting in general on the question of the settlement of disputes, he said that, first, his delegation approved the principle of pacific settlement in accordance with Article 33 of the Charter of the United Nations. Secondly, States should be given freedom to choose whichever procedure they preferred; it would be unrealistic to seek to impose acceptance of compulsory jurisdiction. Thirdly, disputes arising from matters relating to State sovereignty should be distinguished from other categories of dispute. Fourthly, his delegation had no objection to the inclusion in the convention of provisions governing the peaceful settlement of disputes; detailed provisions could, however, be included in a separate optional protocol.

16. His delegation would support the establishment of a fourth committee to deal with the question of settlement of disputes, but was ready in a spirit of co-operation to study any other proposals that might further the objectives of the Conference.

Mr. Moreno-Martínez (Dominican Republic), Vice-President, took the Chair.

17. Mr. AL-ADHAMI (Iraq) said that the President's text (A/CONF.62/WP.9) contained positive elements that could form the basis for an acceptable compromise. In order not to upset the delicate balance reached after lengthy negotiations, it would be necessary to adopt compulsory procedures for the settlement of disputes, and all decisions must be binding. Only in that way was it possible to ensure respect for the rights of small developing countries. Such a system would also strengthen international peace and security.

18. His delegation wished to make the following points. First, the provisions governing the settlement of disputes should form an integral part of the future Convention. Secondly, parties to the dispute should have the freedom to choose any of the various peaceful means of settlement; compulsory procedures should be instituted only if the parties failed to reach agreement. Thirdly, a tribunal, as proposed in the text, should constitute the main mechanism for the settlement of disputes. Access to the tribunal should also be accorded to those national liberation movements that were participating in the Conference.

19. His delegation would express its views on the remaining aspects of the settlement of disputes within the body that had been proposed to deal with that question.

20. Mr. EL MEKKI (Sudan) noted that article 9 of the President's text provided for compulsory jurisdiction in the settlement of disputes, and gave the parties the option of choosing the jurisdiction of the proposed Law of the Sea Tribunal, an arbitral tribunal or the International Court of Justice. Yet many delegations opposed the establishment of the Law of the Sea Tribunal. Furthermore, many developing countries, including his own, were reluctant to accept the compulsory jurisdiction of any particular judicial organ or that of a third party. The nature of the dispute and the interests and status of the parties should indicate the best settlement procedure. To compel a country to follow certain procedures constituted interference in the internal affairs of that State and restricted its freedom of choice under Article 33 of the Charter of the United Nations. States should have full freedom to choose the procedure most appropriate for settling any dispute. He agreed with the representative of France that article 9 was a step forward from the corresponding provision formulated by the informal group on the settlement of disputes. It might not, however, be possible for States, especially the developing countries, to choose from the compulsory procedures put forward in article 9, which might place them at the mercy of groups of States or persons that would compel them to appear before the body in question.

21. Mr. NANDAN (Fiji) said that procedures for the settlement of disputes arising from the interpretation and application of the convention were essential and should be an integral part of the convention. The new convention would be a delicately balanced compromise and there would inevitably be widely divergent interpretations of its provisions. The procedures for the settlement of disputes must therefore be prompt, final and of universal application. They must also ensure equality of treatment of all States before tribunals that were impartial, neutral and readily accessible. Uniform interpretation of the convention was also essential in order to give effect and meaning to its provisions.

22. His delegation believed that document A/CONF.62/WP.9 constituted a suitable basis for negotiation even though it had reservations regarding certain aspects of the text. His delegation supported the concept of freedom of

choice in the procedures to be followed and in the selection of tribunals. However, it had doubts about the provisions of article 9, which could have the effect of imposing on parties to a dispute a particular tribunal that was not of their choice. Article 9 of the text submitted by the informal group on the settlement of disputes should be retained, because it was more likely to give effect to the wishes of the parties. In the event of disagreement, it provided for the determining choice of forum to be made by the defendant.

23. His delegation also had reservations regarding the exception provisions contained in article 18, paragraph 2, because they were too broad and ambiguous. Such a broad range of exceptions could result in wide disagreement on the extent of the exclusions. It would also exclude from the dispute settlement procedures many disputes which by their very nature should be the subject of prompt compulsory settlement. Exceptions, if any, should be restricted to the absolute minimum and spelt out with great clarity.

24. With respect to the law of the sea tribunal, his delegation favoured the establishment of one tribunal only, having comprehensive jurisdiction to consider all disputes, including those relating to the international area. That, of course, was without prejudice to the special procedures envisaged in annexes IIA, IIB and IIC. The tribunal should be small both in size and in cost, and his delegation therefore supported the concept of a small cadre of permanent members readily available to deal expeditiously with urgent matters such as applications for interim measures. In addition, there should be a panel of members to be used on an *ad hoc* basis, as and when required for sittings of the tribunal. A tribunal of 15 members would be too large and unwieldy to function efficiently and expeditiously. Furthermore, the expense of maintaining such a body on a permanent basis could not be justified.

25. With respect to the Conference's future work on the settlement of disputes, his delegation had grave doubts about the practicability of the formation of a fourth committee at the late stage the Conference had reached. It would prefer to proceed with consideration of that matter on an *ad hoc* basis, possibly under the chairmanship of the President of the Conference.

Mr. Al-Adhami (Iraq), Vice-President, took the Chair.

26. Mr. AL-MOUR (United Arab Emirates) said that document A/CONF.62/WP.9 was not the result of consultations and therefore did not reflect the main trends in the Conference. The present debate on the settlement of disputes was the true starting-point for the elaboration of texts on that subject. The document under consideration should therefore be revised to reflect a realistic balance and to lay a solid basis for international relations.

27. Integrated systems for the settlement of disputes were necessary if the convention was to be accepted and implemented by all. Procedures for the settlement of disputes should therefore be given priority in accordance with Article 33 of the Charter of the United Nations and recognition should be given to bilateral or multilateral arrangements concluded by States for the peaceful settlement of their disputes.

28. His delegation supported the establishment of one permanent tribunal to consider all disputes arising from the interpretation and application of the convention, since such a body would permit the harmonization of decisions. In establishing such a tribunal, however, the interests of developing countries must be taken into account, particularly with respect to the principle of equitable geographic distribution. The tribunal should also have two separate chambers, one for sea-bed disputes and the other for other matters relating to the law of the sea.

29. If the tribunal and the International Court of Justice had parallel competences, there would be conflict in the decisions taken. It was obviously clear that decisions taken by an international tribunal in matters relating to international relationships might affect not only the States parties to the dispute but the community of nations as a whole, owing to the fact that such decisions might deal with general rules of public international law, such as decisions on the delimitations of maritime areas.

30. Moreover, his delegation wished to draw attention to situations in which a dispute related to a topic with interrelated elements and in which only some of those elements were within the competence of the tribunal on the law of the sea while other elements were not. In such a case, could such a topic, with all its elements, be referred to the tribunal on the law of the sea that was to be established?

31. His delegation supported the concept of a simplified settlement of disputes and believed that the nature of the procedures should depend on the nature of the disputes. Accordingly, it did not object to special procedures for specific cases.

32. His delegation did not, however, agree with the principle of compulsory jurisdiction in matters relating to the exercise of sovereignty or sovereign rights or jurisdiction or regulatory powers in maritime areas within national jurisdiction. It therefore believed that article 18, paragraph 2, was fully warranted and supported the right of a State to express reservations when ratifying the convention so that it would not be compelled to apply some or all of the procedures specified therein.

The meeting rose at 11.25 a.m.

65th meeting

Monday, 12 April 1976, at 11.15 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add.1)

1. Mr. MacEACHEN (Canada) said that he was pleased to note that the Conference had made considerable progress in two years, thanks to the determination of representatives; much remained to be done, however, and time was running out.

2. At the thirtieth session of the General Assembly he had stated that the viability of an increasingly interdependent world order rested on the creation of a more equitable international economic order. The new law of the sea therefore had to lay down duties to go hand in hand with every new right recognized and to be based on principles of

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.65

65th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*

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23. His delegation also had reservations regarding the exception provisions contained in article 18, paragraph 2, because they were too broad and ambiguous. Such a broad range of exceptions could result in wide disagreement on the extent of the exclusions. It would also exclude from the dispute settlement procedures many disputes which by their very nature should be the subject of prompt compulsory settlement. Exceptions, if any, should be restricted to the absolute minimum and spelt out with great clarity.

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Settlement of disputes *(continued)* (A/CONF.62/WP.8,[1] WP.9 and Add.1)

1. Mr. MacEACHEN (Canada) said that he was pleased to note that the Conference had made considerable progress in two years, thanks to the determination of representatives; much remained to be done, however, and time was running out.

2. At the thirtieth session of the General Assembly he had stated that the viability of an increasingly interdependent world order rested on the creation of a more equitable international economic order. The new law of the sea therefore had to lay down duties to go hand in hand with every new right recognized and to be based on principles of

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75. V.10).

equity rather than on power. In 1945 the founders of the United Nations had devised a system for the peaceful settlement of disputes, but 30 years later the Organization was still facing the same problems. It was imperative that the problem of dispute settlement should be considered thoroughly if the convention on the law of the sea was to have any value. Any State acceding to an international legal instrument should be prepared to abide by its terms and to agree to being judged by an impartial system of compulsory third-party dispute settlement; that was particularly important in view of the fact that a great many of the rules of the future convention would be new and even revolutionary. Differences would, therefore, inevitably arise from time to time as to their interpretation and application. Such differences should, of course, first be the subject of negotiation, a fundamental process in international relations. However, there would be cases in which only an independent third party could settle the dispute. Such a system would in the long run provide an important means of elucidation and interpretation of the text of the convention. It would also protect the rights of less powerful States by ensuring equality before the law. His delegation therefore believed that a dispute settlement system should be an integral part of the law of the sea convention. The inclusion of an optional protocol, leaving it open to States to accept or reject compulsory third party adjudication, would constitute a failure of the Conference on a central issue.

3. As to settlement procedures, his delegation had not yet adopted a firm position; it would do its utmost to promote the drafting of provisions which seemed likely to command broad support. In that connexion, although it had reservations with regard to certain points, his delegation welcomed the fact that the President had taken the initiative in introducing a text on the settlement of disputes (A/CONF.62/WP.9), and fully supported the use of that text by the Conference as a basis for negotiation.

4. He would next outline a few of his country's fundamental objectives with respect to the settlement of disputes in the context of that text.

5. First of all, there could clearly be no international settlement in the case of disputes which, under the convention, fell within the domestic jurisdiction of States. That being the case, it was of importance to ensure that there should be a comprehensive system of compulsory dispute settlement applicable, not only to the economic zone, but also to the high seas and any other area of the seas, such as international straits, in which freedom of navigation and the interests of coastal States might be in conflict. The rights of coastal States with regard to their environment and their security were also in need of protection.

6. Secondly, with respect to the principle that States should be free to choose the system of dispute settlement most appropriate to their needs, provided that the procedure was one which led to a binding decision, the proposals in the text seemed to be satisfactory. A corollary of that principle was that, subject to any specific exceptions made in the convention, no State should be free to choose the areas of law, or of the seas, which it wished to subject to compulsory settlement. Under the convention the system of settlement would apply to all disputes, and the parties would consider themselves bound by the decision of the judicial organ chosen. Canada was opposed to any system which allowed a party to opt in at the last minute for the purpose of instituting an action against another State, while not having previously made itself subject to compulsory dispute-settlement proceedings brought by other States. It was also opposed to a system of dispute settlement based upon an optional protocol. Given the nature and extent of the new law involved, such an approach would deprive the system of all effectiveness.

7. Thirdly, his delegation had reservations with respect to article 9, which gave primacy to a new law of the sea tribunal. It saw no need to create a new court when the International Court of Justice and arbitral procedures already existed. Most disputes could, in fact, be settled by arbitration or through recourse to experts. If, however, the majority of States preferred the creation of a new tribunal, his delegation would be willing to work with other delegations to establish an appropriate institution.

8. Fourthly, the variety of issues dealt with in the convention made it necessary to adopt certain special procedures, which might be of a judicial character. The First Committee was considering the question of a judicial organ of the International Sea-bed Authority and the Third Committee that of a special procedure for the settlement of disputes in the field of marine scientific research. The possible establishment of a continental shelf boundary commission was also under consideration. Such special procedures could prove very useful. It should be noted in that connexion that the link between the special procedures set out in annex II and article 6 was unclear. For the time being, his delegation did not consider that the procedures for arbitration by experts set out in annex II should be the principal means of resolving all disputes concerning fisheries, pollution and marine scientific research, although in certain cases recourse to experts was desirable. Special procedures were no panacea, and should not in any event replace a comprehensive procedure.

9. Fifthly, his delegation questioned the utility of the provisions for appeals and for provisional measures at the inception of a dispute, but it was prepared to discuss them with other delegations. With respect to the status of parties to a dispute, his delegation had difficulty with the suggestion that, as a general rule, private persons and private companies should be placed on an equal footing with States (article 13). It would, however, be prepared to consider an exception for private companies called to appear before the judicial organ of the International Sea-bed Authority in contractual matters.

10. Sixthly, one of the major issues was the extent to which disputes arising out of the exercise of coastal State authority in the economic zone should be subject to compulsory settlement. On the one hand, the resource rights and environmental duties of coastal States in the economic zone would involve the exercise of broad discretion, but, on the other hand, those rights and duties would have to be exercised in conformity with the convention and should not lead to interference with the legitimate rights of other States. His country was seeking no undue restriction on the exercise of the rights of the coastal State in the economic zone, but it did not share the view that no disputes arising from the economic zone should be subject to compulsory settlement. The first requirement was to specify the precise rights and obligations of the coastal State in the convention and to establish bilateral, regional and multilateral procedures for dispute avoidance. With that in mind, it was difficult to envisage dispute settlement with respect to the exploration and exploitation of the resources of the sea-bed and subsoil of the continental shelf. The same was true for fisheries management, except in the case of a coastal State failing to meet its obligations in respect of conservation or the full utilization of resources. Part II of the single negotiating text (see A/CONF.62/WP.8) conferred broad authority on coastal States. In the view of his delegation, any difficulties which the coastal State might encounter with other States in the exercise of its management jurisdiction over fisheries should be resolved by negotiation and by the establishment of various bilateral and multilateral bodies set up for that purpose. It also believed that coastal States should be free to exercise their jurisdiction over the prevention of pollution

and the regulation of marine scientific research in the economic zone, so long as they remained within the bounds of the discretion vested in them and did not infringe the rights of other States. In cases of gross abuse, adjudication should apply with respect to both coastal States and other users, and in both the economic zone and international straits.

11. Rather than defining the situations in which compulsory dispute settlement would be appropriate, one solution would be to make an exception for disputes arising in the economic zone or international straits, except in the case of a gross abuse by either the coastal State or other users. Another approach would be to state that there could be no compulsory dispute settlement except in cases of interference by the coastal State with certain specific rights of other States, such as freedom of navigation or scientific research, or the abuse of such navigational rights by other states in a manner which damaged coastal or straits States. He had noted that a basis for either approach was already to be found in article 18 of document A/CONF.62/WP.9. The question was complex, but it should be possible to find a middle ground.

12. He suggested that a working group of the Plenary should be established to continue negotiations on the subject after the general debate. The group should be open-ended, and the President might use his good offices to ensure that its membership was broadly representative of the Conference. His delegation was, of course, prepared to participate in the work of the group.

13. His delegation was prepared to work with other delegations for the resolution of difficult problems concerning the compulsory settlement of disputes. A realistic, comprehensive and viable system was vital, not only for the long-term utility of the convention which was being negotiated, but also for the promotion of the rule of law in international affairs, and hence the shaping of a peaceful world with a stable and equitable world order.

14. Mr. KRISPIS (Greece) said that his delegation had an open mind on most of the points in document A/CONF.62/WP.9. On the matter of the interpretation and application of the future convention, it was in principle favourable to the establishment of a compulsory jurisdiction whose decisions would have binding force, as that would make the law of the sea effective. No legal document was so clear as not to require interpretation; consequently, it was natural that the parties to a dispute should sometimes have different views. Even where they agreed to refer the dispute to a third party, they frequently had difficulty in agreeing on the terms of a special agreement or a compromise. The possibility of unilateral recourse to a court therefore remained the only way out.

15. His delegation considered the International Court of Justice to be the most appropriate forum for judging law of the sea matters. However, if the Conference decided to establish a tribunal for the law of the sea, his delegation believed it expedient that such a tribunal should have concurrent jurisdiction with the International Court of Justice, that it should be composed of eminent jurists specializing in the law of the sea and that it should have jurisdiction over all questions of the law of the sea, including matters connected with the International Sea-bed Authority.

16. Furthermore, his delegation had no objection to leaving the choice of the court to the defendant, provided that the State concerned had stated such preference at the time of ratifying the convention.

17. He wished to stress that his delegation would be quite satisfied if the Conference decided to allow no exceptions to the compulsory judicial settlement. If, however, the Conference decided otherwise, the compulsory jurisdiction of the International Court of Justice, and that of the law of the sea tribunal if established, should also extend to the question of whether a given dispute constituted an exception or not. The International Court of Justice or the law of the sea tribunal must have "the competence of the competence", i.e. the authority to judge, on the unilateral application of either party, whether it was empowered to handle a dispute or not.

18. On behalf of his delegation he expressed appreciation for the initiative taken by the President of the Conference in submitting the paper on the settlement of disputes, which was a necessary complement to the informal single negotiating text.

Mr. Tredinnick (Bolivia), Vice-President, took the Chair.

19. Mr. DIOP (Senegal) said that his delegation attached the greatest importance to the question of the settlement of disputes, which, in its view, constituted the corner-stone of the legal edifice which the Conference was constructing. It welcomed the initiative taken by the President in submitting a paper on the subject and thus facilitating the task of the Conference, and thanked the representative of Australia and the informal group on the settlement of disputes for their help in preparing that document.

20. Generally speaking, Senegal subscribed whole-heartedly to the principle of the peaceful settlement of disputes set forth in Articles 2 and 33 of the Charter of the United Nations. More specifically, his delegation held that the procedure for the settlement of disputes should be determined by the nature of the dispute and the maritime area involved. In other words, any dispute relating to the interpretation or the application of the convention or arising from the coastal State's exercise of exclusive jurisdiction, under the terms of the convention, in its territorial waters or its exclusive economic zone should be settled by the competent authorities of the coastal State, provided that exceptions might be made if it could be demonstrated that the coastal State had deliberately infringed freedom of navigation or of overflight. Thus, the establishment of special procedures leading to binding decisions in respect of technical and scientific questions, such as fishing, pollution and scientific research, would not jeopardize the exclusive jurisdiction of the coastal State.

21. His delegation had no difficulty in agreeing to the proposition that the parties should have recourse to the law of the sea tribunal in disputes relating to the international sea-bed area or to the freedoms of navigation and overflight within the exclusive economic zone unless they agreed to refer the dispute to an arbitral tribunal or to the International Court of Justice. The proposed law of the sea tribunal should be designed to function expeditiously, flexibly and efficiently. The possibility of recourse to it should be confined to States and the International Sea-bed Authority. Any other party seeking a judicial settlement would have its interests represented by the State or States of which it was a national. However, the existence of a law of the sea tribunal should not rule out the possibility of leaving the choice of procedures to the parties, who should be free to select either arbitration or the jurisdiction of the International Court of Justice, the dispute being referred to the law of the sea tribunal only if they failed to opt for one of those procedures.

22. His delegation reserved the right to speak again on the subject in due course.

23. Mr. BAROODY (Saudi Arabia) said that he was not sure that it was advisable for the Conference to be considering the machinery for the settlement of disputes before the participants had reached agreement on substantive questions, which was like putting the cart before the horse. Moreover, the danger of being carried away by idealism, a mistake made at San Francisco in 1945 when the Charter had been signed, was evident; it had to be admitted that the Charter had by no means settled all problems. In the matter

under discussion, realism was needed; if the States which signed the future convention made too many reservations, its effectiveness would be greatly diminished. That would be extremely regrettable because the problems involved—rights of States, exploration and exploitation of resources, transfer of technology, and so forth—were exceedingly important.

24. He was inclined to ask whether a law of the sea tribunal might not face the same problems of dispute settlement as the International Court of Justice, whose decisions had been ignored with impunity by certain States. Likewise, there appeared to be no need to draw up exact rules for arbitration, which remained the best procedure in existing circumstances. Disputes might be settled in the first instance by compromise and, if that method failed, they should be referred to the International Court of Justice.

25. As to the convention itself, he recalled that several different covenants concerning the human rights question had been signed in Paris. The same solution might be adopted in the case at hand. Instead of a single treaty, three or four treaties, or a single treaty consisting of four distinct parts, might be concluded. The parts would be open for signature simultaneously, but could be ratified independently. That would undoubtedly be the best solution, since a global convention involving a complex settlement machinery would be sure to cause a host of problems. He therefore suggested that the representatives at the Conference, before putting the final touches to the text of the convention, should consider the establishment of a four-part treaty, which would give greater flexibility to the whole. Such flexibility was even more indispensable in view of the fact that the position of States could change radically at the will of Governments or according to circumstances.

26. That approach would be preferable to the package deal approach which was so widely supported at the Conference, though there was every reason to fear that it might turn out to be a Pandora's box.

27. He suggested that an *ad hoc* committee should be formed to deal with the question of dispute settlement. It would consist of representatives of the countries wielding world power and of the small States which might come to argue their case before it. For the sake of greater efficiency, membership should not exceed 15. The decisions taken by the committee would gain in practicality what they might lose in idealism. His delegation did not wish to belong to such a committee, but was prepared to give serious consideration to all its proposals. In the words of the old maxim, if one could not get all that one wanted, one should settle for what one could get.

Mr. Amerasinghe (Sri Lanka) resumed the Chair.

28. The PRESIDENT recalled that in accordance with his memorandum A/CONF.62/WP.9/Add.1, the Plenary Conference should indicate whether it wanted him to prepare a new informal single negotiating text of the same status and character as the three texts presented by the three Main Committees. In his opinion, a matter of such supreme importance as dispute settlement should not be dealt with differently from other matters. If the Conference so authorized, he would therefore prepare the new text taking into account the views expressed during the formal and informal discussions held thus far. He would also take into consideration any provisions of parts I, II and III of the informal single negotiating text (see A/CONF.62/WP.8), which was already before the Conference and on which the new text would have a bearing. In that connexion, he would be sure to consult the Chairmen of the three Committees. The new document would be informal in character, would not prejudice the position of any delegation and would not presume to represent any negotiated text or accepted compromise. It would be a procedural device providing a basis for later negotiations. It would in no way affect proposals already made by delegations or their right to submit amendments or new proposals. Delegations could therefore be expected not to reject *ab initio* any portion of the text. All the provisions submitted should be negotiated, inasmuch as the very purpose of negotiation was to reconcile that which might appear irreconcilable at the outset.

29. As to the procedure to be adopted in regard to the conduct of negotiations, various proposals had been made including the creation of another committee, an *ad hoc* working group, and the conversion of an existing informal group into a formal group. The informal group had already done very valuable work, and it seemed undesirable to change its status; the creation of another committee at that stage would cause insurmountable problems in practice. He recalled that at the session held in Geneva in 1975 he had called for the revival of the device of the consultative group consisting of small contact groups of about 10 representatives, with an equal number of alternates, appointed by each geographic group and representative of all interests; that proposal had not received general approval on the ground that negotiation, even if informal, should involve all participants. Then again, experience had shown that such a system, based on the existence of different groups, would, despite its intended open-ended character, secure the participation of all delegations only in theory; delegations, particularly those of limited size, would be unable to attend all the meetings.

30. He therefore proposed that the negotiations on the informal single negotiating text be conducted in plenary in informal sessions, that all groups already functioning be allowed to hold informal consultations but be required to bring the results of their consultations to his attention so that he might in turn report the results to all delegations in plenary, and that he be allowed to bring together for informal consultations delegations holding differing views on particular issues in an effort to resolve those differences before proceeding with the matter in plenary.

31. He hoped that that procedure would expedite negotiations and would be approved by all delegations.

32. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that the plenary discussion showed that, generally speaking, no decision had been reached on many substantive questions which had been discussed only incidentally. The matter should be pursued further so that the rights of coastal States within the limits of their national jurisdiction would be appropriately protected. It could not be denied that a system of compulsory settlement of disputes would be necessary in the case of disputes beyond the limits of national jurisdiction of coastal States. In that connexion, there were different points of view regarding the respective jurisdictions to be granted to the various elements in the proposed regulatory machinery: the law of the sea tribunal, conciliation commission, arbitration procedure and the International Court of Justice. He hoped that the Main Committees would soon complete their work and that it would then be possible to draft a precisely worded document to serve as a basis for negotiation for the establishment of such a system. Views also differed regarding the procedures for the settlement of disputes arising in certain specific areas, such as fisheries, pollution and scientific research.

33. It therefore seemed that, in the main, delegations had decided to continue to go along the course that had been adopted but to refer the matter of the settlement of disputes to an *ad hoc* group of the plenary or to a separate committee which would give consideration to the views expressed during the general debate.

34. Accordingly he considered that the substantive discussion should be continued informally in plenary while smaller groups, which were accessible to all delegations, would

continue to meet. The President must also set aside sufficient time for consultations. Thereafter he would have the task of preparing a new informal single negotiating text on the settlement of disputes.

35. Mr. SAMANEZ CONCHA (Peru) agreed with the statement of the representative of Ecuador. He considered that that position was reasonable as many substantive questions had been discussed by some delegations in only very general terms and should be discussed in depth.

36. The PRESIDENT said that acceptance of that view would lead to reopening of the general debate. It was his understanding that most delegations had expressed preference for the system of small informal groups. He accordingly suggested that the procedure adopted by the other committees continue to be followed. In that spirit he had proposed the preparation of a new text which would be of the same nature and have the same importance as the texts submitted by the Chairmen of the three Main Committees. That solution would save time; naturally the new text would take account of the points of view expressed during the general debate and of all suggestions from informal groups that were brought to his attention.

37. Mr. DRISS (Tunisia) inquired whether the text in question was the same as that contained in documents A/CONF.62/WP.9 and Add.1 or whether it was a new text. In another connexion, it was his understanding that negotiations would take place in plenary, but that such meetings would be of an informal nature. He did not see any great difference between that and the formula creating an open-ended *ad hoc* working group, or even a new committee. In his opinion, consultations should take place before any decision was taken in the matter. Furthermore, he considered that any proposal containing three or more elements should be submitted in writing by delegations in order to avoid any misunderstanding between them and the President. He also considered that at the present stage, the time had come to determine and establish the extent to which the procedure adopted had proved fruitful. So far the trend had been to consider all issues informally. Should that practice be continued, should there be a reorientation, or should improvements be considered?

38. The PRESIDENT pointed out that the new text he would present would be a modified one in that it would take account of the points of view which had been expressed. However, it would still be a negotiating text which, by definition, could not cover all proposals in their entirety. The three Main Committees had adopted and continued to follow that procedure which had proved perfectly acceptable. A radical reorientation at the current stage was certainly not desirable since the time had come to initiate negotiations.

39. Mr. CISSÉ (Senegal) strongly favoured the continuation of the informal method of work. He felt sure that the new informal text submitted by the President would provide a satisfactory basis for work and that it would take account of the views expressed and of the need to safeguard the rights of coastal States in the exclusive economic zone and in the territorial sea. However, he hoped that there would be no preconceptions concerning the title of the new single negotiating text to be submitted, and that, without necessarily specifying that it would be an informal text, it would be indicated that it would have the same character as the texts submitted by the three Main Committees.

40. Mr. HARRY (Australia) supported the President's proposal and stated that co-ordination of the new text with those submitted by the Main Committees would have to be ensured in all matters relating to the settlement of disputes that might arise in their respective fields of competence. He was confident that in the new text, the President would take account of all the elements at his disposal and, in particular, of the views expressed both in the plenary and in the meetings of the informal groups. He would like to see a reference in that text, in the same way as in document A/CONF.62/WP.9, to documents A/CONF.62/L.7[2] (proposal by the nine), and document SD/Gp/2nd Session/No. 1/Rev.5 (submitted by the informal working group at Geneva) and, if possible, reproduction of those documents as an annex to the new text on the settlement of disputes.

41. The PRESIDENT said that he would consider the matter. However, he noted that none of the texts submitted by the three Main Committees contained such an annex. He reiterated that he would take account of the points of view expressed both in the plenary and in the consultations in the informal groups.

42. Mr. ROMANOV (Union of Soviet Socialist Republics) considered that the proposed procedure in respect of negotiations on the text relating to the settlement of disputes was quite logical; such procedure would provide the opportunity for detailed consideration of the various procedures for settling disputes which might derive from the interpretation and implementation of the convention. His delegation was prepared to study the new version of the single negotiating text to be submitted by the President as soon as it was distributed. The only question which arose was whether sufficient time would be available at the present session for reconsideration of that issue. For its part, his delegation was prepared to begin such a study forthwith.

43. He emphasized the fact that the ultimate aim of the Conference was to produce a generally acceptable text, which, if necessary, would be a compromise, representing the global solution which had been decided at Caracas, on the basis of the principle that ocean space should be considered as a whole and not as fragments belonging to one or another group of countries. The new single negotiating text on the settlement of disputes would constitute one element of that global solution.

44. Mr. GÜNEY (Turkey) did not object to the continuation of the informal method of negotiation. However, the formula proposed by the President was rather unusual. Current practice consisted of transforming the plenary of the Conference into a committee of the whole, which was perfectly democratic. However, it was less usual that a diplomatic conference transformed itself into an informal committee. His delegation had not adopted a definite position in that respect. However, it would prefer that the question of settlement of disputes should be considered by a special committee or an informal *ad hoc* group open to all delegations. To date, the President had made an important and decisive contribution to the informal negotiations. There was a danger that if he could no longer preside over the informal work in a permanent capacity, it would become disorganized and yield no results. Consequently, it was necessary to know the position before deciding to proceed in that manner.

45. The PRESIDENT pointed out that a decision had been adopted at Caracas to negotiate in plenary, thereby precluding the possibility of establishing a fourth committee. He reiterated that, in preparing the new single negotiating text, he would, to the greatest possible extent, take account of all the comments that had been made. He considered that at the present time he was in possession of sufficient material to enable him to prepare such a text.

46. Mr. HANCOCK (United States of America) said that his delegation was prepared to work on the new negotiating text as soon as it was available and to participate in all informal meetings which might be arranged for that purpose.

[2] *Ibid.*, vol. III (United Nations publication, Sales No. E.75.V.5).

He expressed the hope that such meetings would be frequent and organized on a regular basis, so that in the four remaining working weeks the Conference would be able to reach an agreement which would command the widest possible support with regard to the question of the settlement of disputes.

47. Mr. DRISS (Tunisia) inquired when the document in question would be available and whether it would be possible to submit suggestions and amendments to the text. His delegation acted as co-ordinator of the Group of 77 which it would have to consult on certain issues. He accepted in principle the proposal by the President regarding negotiating procedure. However, he would like to see sufficient time made available for the submission of proposals, since the item under consideration was highly controversial and he foresaw a need for much consultation.

48. The PRESIDENT said that he would announce the date by which he felt he would be able to submit the new text after consultations with the Chairmen of the three Main Committees. Furthermore, he would wish to meet the Chairmen of the various working groups in order to have their views, if possible, by the end of the week, but later if more time were required.

49. Mr. BARODDY (Saudi Arabia) wished to know whether delegations which had not been able to or had not wished to participate in all the informal meetings would have an opportunity of submitting informal amendments to the new negotiating text.

50. The PRESIDENT assured him that they would. He noted that there was general agreement among delegations that, taking into account the comments and observations submitted to him both in the plenary and as a result of informal meetings, he should prepare a new single negotiating text on the settlement of disputes which would have the same nature as the three texts submitted by the three Main Committees respectively.

It was so decided.

51. The PRESIDENT also noted that all delegations were agreed that with regard to that text, the same negotiating procedure as for the three other texts should be adopted.

It was so decided.

The meeting rose at 1 p.m.

66th meeting

Monday, 19 April 1976, at 10.45 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

Peaceful uses of ocean space: zones of peace and security

1. The PRESIDENT recalled that the first reference to the question had been made in General Assembly resolution 2467 (XXIII), which established a Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. In resolution 2750 C (XXV), the General Assembly had reaffirmed the mandate of that Committee and had decided to convene a Conference on the Law of the Sea. In its resolution 3067 (XXVIII), the General Assembly had decided that the mandate of the Conference should be "to adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject-matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV) and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole". The list of subjects and issues had subsequently been adopted by the Conference itself.

2. It was clear therefore that any treatment of the question of the "Peaceful uses of ocean space: zones of peace and security" could not be divorced from the international negotiations being undertaken in the field of disarmament or from other measures adopted by the United Nations to ensure that the arms race, and in particular nuclear competition, should not spread beyond the outer limit of a sea-bed zone which had been strictly defined. Similarly, with regard to the declaration of zones of peace, it was essential that the measures adopted by different organs and bodies of the United Nations on the same subject should be properly co-ordinated, so as to avoid inconsistent provisions.

3. The deliberations of the Conference of the Committee on Disarmament, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Sub-Soil Thereof, in resolution 2660 (XXV), the Declaration of the Indian Ocean as a zone of peace, in resolution 2832 (XXVI), the establishment of a nuclear-weapon-free zone in the South Pacific dealt with in resolution 3477 (XXX) and proposals for the establishment of similar zones elsewhere should therefore be borne in mind in the course of the debate.

4. To the extent to which Members of the United Nations had committed themselves on courses of action in regard to disarmament, the denuclearization and demilitarization of the sea-bed with the establishment of zones of peace, they had imposed on themselves certain limitations on the action they might take within the Conference on the Law of the Sea.

5. Mr. BÁKULA (Peru) said it should not be forgotten, when the highly important question of the peaceful uses of ocean space was examined, that the mandate of the Conference was to work out a global convention dealing with all aspects of the law of the sea, not only the utilization of natural resources, pollution, scientific research, the transfer of technology and similar questions, but also the activities that might affect the peace or security of States and the provisions reserving the international area of the sea-bed and high seas exclusively for peaceful purposes. The objections put forward by the representatives of certain States to the effect that the Conference was not competent to examine that question were unfounded. The Conference was clearly competent to do so by reason of the mandate entrusted to it by the General Assembly and of its own decision to include the question on its agenda. Furthermore, the Conference was bound to adopt provisions to ensure that States should act peacefully, not only in the international area of ocean

Annex 77

Minute dated 31 May 1977 from [name redacted], East African Department, UK Foreign and Commonwealth Office to [name redacted], Legal Advisers, "BIOT: Fishery Restrictions"

[redacted]

Reference.....

[redacted]
Legal Advisers

BIOT: FISHERY RESTRICTIONS

FLAG A

1. We spoke. Seoul telno 93 refers.

FLAG B

2. I would be grateful for your advice on the substance of a reply and am attaching a draft telegram to Seoul.

Background

FLAG C

3. BIOT's territorial sea is presumably defined by Seychelles/Mauritian law applying at the time BIOT was established. There is a 3 mile limit.

FLAG D

4. A BIOT fisheries zone was established in terms of Proclamation No. 1 of 1969 and is defined thus: 'The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the BIOT and as its seaward boundary a line drawn so that each point on the line is 12 nautical miles from the nearest point on the low-waterline on the coast or other baseline from which the breadth of the territorial sea is measured.'

5. The Proclamation further states that 'Her Majesty will exercise the same exclusive rights in respect of fisheries in the said fisheries zone as She has in respect of fisheries in the territorial sea of the BIOT subject to such provision as may hereafter be made by law for the control and regulation of fishing within the said zone.'

FLAG E

6. A Fishery Limits Ordinance was passed in 1971 (Ordinance No. 2), (a copy of the draft Ordinance is attached; we do not have the final text), followed by a Commencement Notice.

FLAG F

7. Special provisions apply to Diego Garcia in terms of the 1976 Anglo-US Exchange of Notes (Cmnd 6413). Inter alia, paragraph 13 states, 'The Government of the United Kingdom will not permit commercial fishing ... in ... those areas of the waters, Continental Shelf and sea-bed around Diego Garcia over which the United Kingdom has sovereignty or exercises sovereign rights, unless it is agreed that such activities would not harm or be criminal to the defence use of the island.'

FLAG G

8. At a meeting on 23 September 1965 between the then Colonial Secretary (Mr Greenwood) and Sir Seewoosagur Ramgoolam, the Colonial Secretary undertook that the British Government would use their good offices with the United States Government to ensure that certain facilities, including fishing rights, in the Chagos Archipelago would remain available to the Mauritian

[redacted]

British High Commissioner, Port Louis, acknowledging receipt of Britain's grant for the resettlement of the Iloisstated that the payment did not in any way affect the verbal agreement on fishing reached on 23 September 1965.

9. Points for Elucidation

a. The Fishery Limits Ordinance at present presumably has the effect of excluding all but British (? and Mauritian) fishing vessels from the zone?

b. Does the reference to sovereign areas in the 1976 Anglo-US Exchange of Notes (paragraph 6 above) relate solely to the area of the 3 mile territorial sea?

c. What, if anything, is the legal import of our undertaking to the Mauritians (paragraph 7)? Since the agreement was made in 1965 it could presumably not have any bearing beyond the 3 mile territorial sea?

[redacted]

31 May 1977 East African Department

Annex 78

Second Reading of Maritime Zones Bill (No. XVII of 1977), 31 May 1977

Mr. Jugnauth : I would be grateful if it could be taken afterwards.

PUBLIC BILLS

Third Reading

On motion made and seconded, the Appropriation (1977-78) *Bill* (*No. IX of* 1977) *was read the third time and passed.*

First Reading

On motion made and seconded, the following Bills were read a first time :

(a) The Property Restriction (Amendment) Bill (No. XV of 1977);
(b) The Maritime Zones Bill (No. XVII of 1977);
(c) The Mauritius Housing Corporation (Amendment) Bill (No. XIX of 1977) ;
(d) The Gaming (Amendment) Bill (No. XX of 1977) ;
(e) The Patents (Amendment) Bill (No. XVI of 1977) ;
(f) The Road Traffic (Amendment) Bill (No. XVIII of 1977).

Second Reading

THE PROPERTY RESTRICTION (AMENDMENT) BILL (No. XV of 1977)

Order for second reading read.

The Prime Minister : Sir, I beg to move that the Property Restriction (Amendment) Bill (No. XV of 1977) be read a *second* time.

Under the provisions of the Holding of Lands (Restriction) Act, No. 32 of 1972, Mauritian citizens, married to non-citizens under the system of community of property, had to apply for my authority before purchasing or holding property in Mauritius.

The Property Restriction Act, 1975, provides *inter alia* that this category of persons should be exempt from seeking my authorisation before purchasing property and that those who have purchased without my permission, should have their deeds validated within 6 months of the commencement of the Act (i.e. by the 12th January, 1976).

Many persons have failed to apply for the validation of their deeds. The purpose of the Bill is to give them an opportunity to do so before the end of this year.

This Bill is straightforward and I commend it to the House.

Sir Veerasamy Ringadoo *rose* and *seconded.*

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, in fact, we have, on this side of the House, no quarrel with this Bill; but the only thing which strikes us is that we are wondering why these persons who are involved have not done the needful. Is it believed that they will do so if the period is extended to the end of December ?

The Prime Minister : I don't know whether I can say yes or no to that, Sir. All that the Bill is asking is that the persons be given a chance so that they can apply for validation before the end of this year.

Mr. Speaker : All that they would have to do is to continue buying the newspapers to be kept informed.

Question put and agreed to.

Bill read a second time and committed.

THE MARITIME ZONES BILL (No. XVII of 1977)

Order for second reading read.

The Prime Minister : Sir, I beg to move that the Maritime Zones Bill (No. XVII of 1977) be now read a *second* time.

Sir, as matters stand at present, we only enjoy the following rights in respect of the maritime spaces surrounding our land territory —

(a) sovereignty over the territorial sea to an extent of 12 miles from the baseline ;
(b) sovereign rights over the resources of the continental shelf the surface of which lies to a depth not greater than 200 metres below the surface of the sea or where the natural resources are capable of exploitation, at any greater depth ;
(c) exclusive fishing rights up to a distance of 12 miles from our coast.

We had intended to take unilateral action to extend our sovereignty over maritime spaces in 1970 but in agreement with third-world countries we refrained from doing so in order not to jeopardize the successful outcome of the Law of the Sea Conference.

Since 1970 the International Community has been discussing the various issues governing ocean space and a certain consensus has now emerged. The time has come for us to enact appropriate legislation to assert our sovereignty over maritime spaces surrounding our various islands while taking into account current state practice and the trends which have emerged in the course of the discussions held in the context of the Law of the Sea Conference under the aegis of the United Nations.

Broadly speaking, Sir, the Bill will apply to the territorial waters, the continental shelf and the exclusive economic zone.

As regards the territorial waters, the breadth of our territorial waters will remain unchanged but the Bill makes provision to enable Mauritius as a sovereign state to regulate the entry into and the passage of foreign ships within these waters. In future, foreign military vessels will be required to give prior notice before passing through our waters and submarines, however propelled and including nuclear submarines, will be required to sail above the surface and to show their flag.

We shall continue to exercise exclusive sovereign rights over the territorial waters as if they form part of our land territory.

As regards the continental shelf, the breadth of our continental shelf is not adequately determined under existing international law. The Bill makes provision for the extension of the breath of our continental shelf to the outer edge of the continental margin which is generally recognized as the furthest end of the continental shelf and is also generally regarded as a clear demarcation line. In this connection, Sir, I must inform the House that many states with broad continental shelves are taking similar action. We propose in this regard to resist any attempt to curtail the continental shelf at the 200 mile limit.

As regards the exclusive economic zone, this is a new concept first propounded by Africa and the Bill gives legal effect to its

existence in our domestic law. The Bill provides for enjoyment by Mauritius of exclusive jurisdiction over resources both living and non-living as well as resources for the production of energy from winds, tides and currents, in a maritime zone of a breadth of 200 miles from our land territory.

The Bill makes also various administrative provisions to enable us to exercise our rights to exploit, conserve, manage and protect the resources of the maritime spaces as well as to control marine pollution and to regulate scientific research within our maritime spaces.

This legislation, Sir, aims at extending the sovereignty of our State and should be welcomed by one and all.

With these remarks, Sir, I commend this Bill to the House.

Sir Veerasamy Ringadoo *rose* and *seconded.*

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, we, on this side of the House, welcome the initiative taken by Government in introducing this Bill, because we consider that it is high time that there should be some legislation concerning the matters which have just been pointed out by the hon. Prime Minister. A country, whatever its size, an independent country, has got its sovereignty, its dignity, and, in this matter, it cannot be less than any other country. And we know that for years the ocean has been, in fact, a sphere which only the great powers have been exploiting to the maximum. We know also that there have been some conflicts for quite a long time — for example, if we remember rightly, in so far as the North Sea Continental Shelf is concerned, the states adjoining that shelf have had disputes for years, and the matter has even been to the International Court of Justice. We consider that, as other countries are doing, it is also our duty to make clear what is our position in so far as our rights are concerned, in so far as the ocean is concerned, the continental shelf. And, in doing that, I think we must also prepare ourselves to derive the maximum benefit for this country. It's no use just saying that we have this and that right, and then just keep quiet and let things go as they have in the past. I think there are plenty of riches in the sea which have not been exploited by this country, and I think it is high time that we should start getting ourselves prepared to exploit to the maximum these riches in the interest of this country.

We know, as the Right Hon. the Prime Minister has mentioned, this matter is so important and so urgent that, in fact, there has been an international conference under the aegis of the United Nations that has been going on for quite a long time in order to find the appropriate legislation which can bind the countries involved internationally so that all countries may know what are their respective rights, and respect the rights of other countries also. We know even right now the position is not very clear because that Conference is still going ahead with its business, and we do not know when finally it will evolve certain conclusions and decisions. But, in so far as our position is concerned, we should have liked to be enlightened as to what is the position in so far as the Chagos Archipelago is concerned, specially in relation to Diego Garcia, what is the position of this country in so far as the natural resources of the sea are concerned.

The next thing, Sir, is that we should also give some attention to the dispute that this country has with certain neighbours in the Indian Ocean concerning certain islands because, I think, while we are moving towards clarifying our position in so far as our rights are concerned, it would be a good thing to see whether a Conference between these countries cannot be arranged so that we can settle our disputes amicably, and in a friendly way.

The next thing, Sir, is the question of providing penal clauses in our text of law, if there is breach committed in so far as the provisions are concerned, and maintaining that these provisions are respected by all the other nations. Now, to do this, Sir, I think, right now we do not have the proper facilities, the amenities and the equipment that is necessary, and there again we consider that in order that small countries may protect themselves specially against big powers, big countries, highly developed countries, we should try to join hands and find out how we can in a mutual way make sure that our rights in the Indian Ocean are respected by the other powers. And, we welcome the idea that in so far as our waters are concerned they should be free from warships, submarines and all the rest. Of course, this has been qualified. To approach these waters these ships must first give notice to the Prime Minister's office. We hope that this discretion which is left in the hands of the Right Hon. the Prime Minister will be used with great care.

On the whole, Sir, as I pointed out from the very beginning, we, on this side of the House, welcome this Bill.

Thank you.

M. P. Bérenger (First Member for Belle Rose and Quatre Bornes) : M. le président, comme mon Collègue, le *Leader* de l'Opposition (M. Jugnauth) vient de dire, de ce côté de la Chambre nous sommes en faveur d'un projet de loi qui va dans le sens des résultats positifs qu'il y a eus jusqu'à présent, la Conférence des Nations Unies sur les droits de la mer, et qui va aussi dans le sens des résultats positifs qui ont suivi les récentes consultations entre le Gouvernement de l'Ile Maurice et le Gouvernement des Seychelles. Mais, nous estimons que le projet de loi présenté devant cette Assemblée aujourd'hui soulève un certain nombre de problèmes, pose un certain nombre de questions, qu'il est de notre devoir d'approfondir. Avant de le faire, j'aimerais souligner, M. le président, que nous sommes pleinement conscients que ce projet de loi, l'initiative du Gouvernement, que nous approuvons, se place elle-même dans un contexte international. Nous savons que c'est seulement depuis quelques années, M. le président, que le monde a pris conscience que ses ressources ne sont pas inépuisables. Les matières premières qui se trouvent sur terre et dans les mers ont acquis depuis ces dernières années une valeur qu'elles n'avaient pas avant cette prise de conscience de l'humanité. J'aimerais dire aussi que ce projet de loi se place dans le contexte de la confrontation permanente entre le nord et le sud, le nord riche et industrialisé, et le sud que nous appelons de ce côté de la Chambre, tiers monde, le sud sous-développé et exploité. Nous savons, M. le président, que sur deux points fondamentaux que contient ce projet de loi, la limite des douze milles et des deux cent milles en ce qui concerne la zone économique, sur ces deux points, au moins, la Conférence des Nations Unies sur les Droits de la Mer a accompli beaucoup de progrès. Mais, nous savons

aussi qu'à la Conférence des Nations Unies sur les droits de la mer des problèmes énormes demeurent. En particulier, en ce qui concerne les détroits, mais les détroits n'intéressent pas la petite île Maurice. Ce qui nous intéresse en particulier c'est la question des îles. Nous savons, M. le président, nous qui possédons des îles peuplées qui forment partie du territoire mauricien, mais qui possédons aussi des îles sur lequelles n'habite aucun humain, ou d'autres îles qui ont été dépeuplées ces dernières années, nous savons combien importante sera finalement la décision de cette Conférence des Nations Unies sur les Droits de la Mer, si finalement décision il y a, combien importante sera la décision de cette Conférence en ce qui concerne les îles, c'est-à-dire, savoir à partir de quelle densité de population, à partir de quel taux d'activité économique, une île, un morceau de terre perdue dans un océan deviendra un pays, un territoire ayant les mêmes droits qu'un autre, à partir de quelle densité de population, donc, à partir de quel taux d'activité les petites îles comme nous en possédons, auront droit de réclamer à partir du texte de loi que l'Assemblée est appelée à approuver aujourd'hui, réclamer à partir de ces petites îles, les limites de 12 milles et de 200 milles. En ce moment même nous savons que la Conférence poursuit ses travaux sur ces questions fondamentales, et nous sommes satisfaits que le Premier ministre se soit engagé tout-à-l'heure à ce que l'île Maurice au sein de cette Conférence, fasse de son mieux pour garantir les droits du territoire mauricien. Et j'ajouterai, M. le président, que ce texte de loi se passe aussi dans le contexte de l'Océan Indian, de la militarisation de l'Océan Indien qui occupe l'attention non seulement des îles de l'Océan Indien, mais aussi des pays de l'Afrique qui bordent notre océan, de l'Inde, du Shri Lanka, de l'Australie, de la Conférence des pays non-alignés, de l'Organisation de l'Unité Africaine. Nous estimons, de ce côté de la Chambre, que nous devons placer ce texte de loi non seulement dans le contexte de la Conférence des Nations Unies sur les Droits de la Mer, mais aussi dans le contexte de la militarisation en cours de l'Océan Indien, et en particulier de Diégo Garcia. Après avoir, M. le président, placé ce projet de loi dans ce contexte double, je parlerai des problèmes qui vont se poser à l'île Maurice. Nous savons que notre Premier ministre a déjà déclaré que l'île Maurice était un grand pays dans la mesure où la souveraineté de l'île Maurice s'étend sur le chiffre de 53,000 milles carrés auxquels a déjà fait reférence le Premier ministre. Je crois qu'il est difficile — dans un journal de ce matin on estime qu'il y a un million de milles carrés — je pense qu'il est difficile de mesurer avec un compas sur une carte combien de milles carrés l'île Maurice grâce à ce projet de loi, va contrôler, du moins en théorie. Mais, je pense qu'il est bon de rappeler après ce que le *Leader* de l'opposition (M. Jugnauth) vient de dire, que toute une série de problèmes se posent. Nous avons beaucoup apprécié, M. le président, le fait que le Premier ministre des Seychelles ait sejourné à Maurice recemment, et que le 15 avril dernier un communiqué conjoint a fait état des résultats extrêmement positifs de cette consultation, et de l'accord qui a pu être conclu sur toute une série de problèmes. Le fait demeure, M. le président, que sous les mots demeure la réalité, et qu'en ce qui concerne les bancs de Saya de Malha et Agalega, le doute demeure. Nous ne sommes pas encore de ce côté de la Chambre pleinement satisfaits qu'il y a eu entente totale entre la Republique des Seychelles et l'Ile Maurice en ce qui concerne ces deux problèmes de Saya

de Malha et d'Agalega. Mais, il y a plus compliqué. C est une bonne chose que les relations entre le Gouvernement seychellois et le Gouvernement mauricien dans le contexte des droits de la mer soient aussi bonnes qu'elles sont en ce moment, mais le fait demeure qu'une autre île est en litige, si je puis dire. Il s'agit de Tromelin. Tromelin qui est supposé appartenir à la France, mais que la republique démocratique malgache, de même que l'Ile Maurice réclament comme faisant partie de leur territoire. Nous aimerions, de ce côté de la Chambre, non pas pour verser de l'huile sur le feu, non pas pour attiser les problèmes qui séparent les peuples seychellois, malgache ou mauricien, mais nous aimerions savoir du Premier ministre quelle est l'attitude du Gouvernement actuel sur le problème de Saya de Malha, d'Agalega et de l'île Tromelin. Et, puisque nous sommes sur l'île Tromelin qui est supposée être territoire français dans l'Océan Indien, nous savons combien délicat est le problème posé par l'île de la Réunion qui se trouve à une demi-heure d'avion de nous. Le Premier ministre qui est président en exercice pour quelque temps encore de l'Organisation de l'Unité Africaine est naturellement conscient des résolutions votées par l'OUA, demandant que les pays qui ont encore des colonies ou des territoires très loin du territoire national ne prétendent pas, à partir de ces territoires ou de ces colonies, étendre les zones économiques et les eaux territoriales. Cela nous permet de comprendre combien profond est ce problème qui existe entre l'île Maurice et l'île de la Réunion. Et, sur ce point encore nous aimerions savoir quelle est l'attitude précise du Premier ministre, compte tenu des résolutions de l'Organisation de l'Unité Africaine.

Je passerai ensuite au problème excessivement délicat posé par Diégo Garcia et les autres îles qui ont été détachées de l'île Maurice en 1965. Je ne vais pas, M. le président, prendre le temps de la Chambre, pour revenir sur les nombreuses contradictions qu'a formulées au fil des années le Premier ministre au sujet de Diégo Garcia. Le Premier ministre a dit parfois qu'il y avait rupture de contrat de la part de la Grande Bretagne, il a dit d'autres fois que l'île Maurice gardait tous ses droits sur Diégo Garcia et les autres îles, et que lorsque la Grande Bretagne, les Etats Unis n'en auraient plus besoin, ces îles seraient retournées à l'île Maurice. Il a dit d'autres fois encore que l'île Maurice, même aujourd'hui gardait tous ses droits de prospection sur ces îles et sur les eaux territoriales, ou sur la zone économique qui entoure ces îles. Et, là j'aimerais préciser, M. le président, qu'à l'île Maurice nous parlons beaucoup trop souvent de Diégo Garcia seulement. Je pense qu'il est bon de rappeler à cette Chambre que le *British Indian Ocean Territory*, nouvelle colonie créée de toutes pièces par le Gouvernement britannique, en 1965, ne concerne pas seulement Diégo Garcia.

Diégo Garcia, Peros Banhos, les îles Salomon, les îles Egmont aussi connues sous le nom de Six Islands, les îles Trois Frères qui incluent Danger Island et Eagle Island, c'est toute une grappe d'îles qui a été détachée supposément du territoire mauricien en 1965, et lorsque nous ouvrons l'éventail que représente ces îles, nous n'avons pas un simple nombril au milieu de l'océan indien, ce qu'est Diégo Garcia, nous avons un éventail qui court du cœur de l'océan indien au canal de Mozambique. Nous avons donc toute une panoplie d'îles qui permettrait à l'île Maurice d'étendre, et d'augmenter ses problèmes en même

temps, sa souveraineté sur une superficie considérable de l'océan indien, et du canal de Mozambique. Nous estimons de ce côté de la Chambre que le scandale que représente Diégo Garcia et les autres îles détachées de l'île Maurice, les contradictions qu'a accumulées au fil des années le Gouvernement, aujourd'hui qu'un texte de loi capital pour l'avenir de l'île Maurice est déposé devant cette Chambre, nous aimerions s'il en est capable, s'il est suffisamment informé, que le Premier ministre nous dise quelle est la position exacte de l'île Maurice en ce qui concerne Diégo Garcia, Peros Banhos, les iles Salomon, les iles Egmont, les iles Trois Frères. Nous savons que la République des Seychelles, avant d'obtenir son indépendance, a su naviguer et reprendre les trois iles qui avaient été detachées du territoire seychellois, au même moment qu'en 1965 les Anglais détachaient de l'ile Maurice toute cette grappe d'iles. Nous osons espérer que le Gouvernement mauricien, dans ses discussions avec le Gouvernement Seychellois, a demandé, a pris des renseignements, a essayé de s'inspirer de l'exemple seychellois pour récupérer ces iles qui appartiennent à l'ile Maurice. Nous aimerions savoir, nous de ce côté de la Chambre qui disons que ces îles sont le territoire mauricien, appartiennent à l'ile Maurice, et nous permettront d'étendre notre souveraineté sur des régions de l'océan indien, nous aimerions savoir si le Gouvernement est prêt une fois pour toutes à faire cesser le scandale que représentent les contradictions accumulées au fil des ans par le Gouvernement actuel, et de dire de façon catégorique que ces iles appartiennent à l'île Maurice et qu'il va agir dans tous les forums internationaux pour que ces iles soient retournées dans les plus brefs délais à l'île Maurice.

Quand nous avons fait le tour de ces problèmes posés par les iles qui nous appartiennent ou que nous réclamons, nous venons sur une question fondamentale. Le *Leader* de l'opposition l'avait mentionnée tout à l'heure. Il est bon qu'il y ait un texte de loi définissant clairement nos droits, les limites de notre souveraineté sur l'océan indien, mais il ne faut pas que ce texte de loi que nous allons tous voter reste lettre morte, c'est-à-dire qu'il soit écrit sur papier qu'il y a une zone économique de 200 miles, qu'il soit écrit qu'il y a une zone de 12 miles et que l'ile Maurice n'ait tout simplement pas les moyens de faire respecter quoique ce soit.

Loin de nous, de ce côté de la Chambre, de venir demander que l'ile Maurice ait une marine à l'échelle internationale, nous avions souligné lorsqu'on discutait le budget, M. le président, que l'item prévu au *coastal patrol* était absolument ridicule. Nous avions souligné combien dangereux il était pour une petite ile comme l'ile Maurice, le fait que les côtes restaient sans surveillance aucune quasiment. Aujourd'hui nous posons la question : que prévoit le Gouvernement, après que ce texte de loi ait été voté par l'Assemblée, pour faire respecter les droits de l'ile Maurice ? Et cela m'emmènera, pour terminer, à trois suggestions, puisqu'il me semble grotesque de venir dire ici que l'ile Maurice pourra défendre seule, de Diégo Garcia à Peros Banhos, en passant par St. Brandon ou en s'arrêtant à Tromelin. Il me paraît ridicule de venir suggérer que l'île Maurice pourra sérieusement faire respecter sa souveraineté, ses droits sur une telle étendue d'océan.

Je suggérerai donc trois choses comme ligne d'action au Gouvernement. Premièrement comme le *Leader* de l'opposition vient de le dire que la collaboration

entre les iles de l'océan indien soit poussée au maximum. J'ai devant moi, M. le président, le communiqué conjoint signé par les Gouvernements Mauricien et Seychellois, le 15 avril 1977. Au paragraphe 8, je lis :

> "The two delegations agreed that, should problems of delimitation arise in the exercise of the respective jurisdiction of the two countries over maritime space, amicable solution in the spirit of the traditional tie binding the two countries would be sought having regard to the principles of international law and State practice governing the matter."

Bravo ! Il est bon qu'entre le Gouvernement mauricien et le Gouvernement seychellois ce soit un tel climat qui existe, mais ailleurs, M. le président, si nous regardons plus loin, que fait ce Gouvernement sérieusement pour promouvoir la coopération entre les iles de l'Océan indien ? Non seulement ne fait-il rien, mais les ministres, le *front bench* du Gouvernement ne ratent jamais une occasion de s'attaquer à nos voisins malgaches, pour ne pas parler de nos voisins tanzaniens ou du Mozambique. Mais le *front bench* du Gouvernement ne rate jamais une occasion de s'en prendre au Gouvernement malgache. J'ai fait mention tout à l'heure, M. le président, du problème particulier de Tromelin. Nous estimons de ce côté de la Chambre qu'il est indispensable que cesse une fois pour toutes la guerre froide qui existe entre le Gouvernement mauricien actuel et la république démocratique malgache.

En ce qui concerne les Comores, nous estimons que là encore, le Gouvernement mauricien n'a rien fait qui aiderait au développement de la coopération entre les Comores et l'île Maurice. Pour se rendre aux Comores, il faut sans doute continuer à passer par Paris pour arriver à Moroni. Nous demandons donc, M. le président, que dans les trois lignes d'action qui doivent suivre ce projet de loi, d'abord que le Gouvernement cesse la guérilla verbale vis-à-vis de la république démocratique malgache et que la coopération entre les îles de l'océan indien soit véritablement encouragée.

Nous demandons deuxièmement que le Gouvernement mauricien, après les résolutions de l'organisation de l'unité africaine, adopte la même attitude que le Gouvernement de la république démocratique malgache, face aux navires de guerre, c'est-à-dire que les ports mauriciens, que les eaux territoriales mauriciennes ne soient ouvertes à aucun navire de guerre étranger. Qu'une fois pour toutes cette politique déclarée du Gouvernement soit précisée, que les ports mauriciens, les eaux territoriales mauriciennes, — comme c'est le cas à Madagascar, nous savons que le Gouvernement de la republique démocratique malgache n'ouvre ses ports à aucun navire militaire étranger, nous demandons qu'en même temps que la coopération se développe entre les îles de l'océan indier, que les eaux territoriales mauriciennes soient fermées à tout navire de guerre étranger. Nous sommes en faveur, nous profitons de l'occasion pour le dire, de la démilitarisation totale de l'océan indien. Nous ne demandons même pas au Gouvernement mauricien actuel d'être à l'avant garde du mouvement en faveur de la démilitarisation de l'océan indien, nous le demandons malgré que notre Premier ministre soit président de l'OUA, nous demandons tout simplement que le Gouvernement suive dans ce cas précis, l'exemple du Gouvernement de la république démocratique malgache.

Et ma troisième suggestion, M. le président, sera que les représentants du Gouvernement à la conférence des Nations Unies sur les Droits de la Mer qui poursuit ses travaux, que les représentants du

Gouvernement mauricien prennent position systématiquement du côté du sud, face au nord, c'est-à-dire du côté des pays non-industrialisés, sous développés, en voie de développement, qui n'ont pas les moyens d'exploiter les vastes espaces sousmarins qui ne tombent dans aucun territoire de l'océan indien ou d'ailleurs. Nous demandons donc que le Gouvernement mauricien prenne position de façon claire et que ses représentants à la conférence des Nations Unies prennent eux aussi la même position.

Nous autres, M. le président, de ce côté de la Chambre, qui avons toujours dit que le développement de l'île Maurice qui, pour longtemps encore, reposera sur l'industrie sucrière, nous savons de ce côté de la Chambre, qu'il ne faut pas tout chambarder dans l'industrie sucrière. Nous avons toujours dit de ce côté de la Chambre, qu'il faut au contraire augmenter la production sucrière, mais en économisant les terres, en augmentant le rendement des petits planteurs. Nous disons aussi qu'il faut industrialiser. Nous l'avons toujours dit, nous avons dit que nous devons industrialiser, mais nous avons toujours dit aussi que le troisième volet du développement de l'île Maurice, doit être le développement planifié, intensif, rationnel des ressources de la mer. C'est dans ce contexte, puisque notre stratagie de développement de ce côté de la Chambre repose sur ce troisième volet fondamental, c'est dans ce contexte que je terminerai, M. le président, en disant, que ce projet de loi doit être utilisé pour encourager présicément le développement intensif des ressources de la mer, de l'île Maurice.

Merci, M. le président.

The Minister of Fisheries (Mr. I. Seetaram) : Mr. Speaker, Sir, I consider it a great day of rejoicing today that our Parliament is legislating over the extension of the maritime zones of our traditional territories from 12 miles to 200 miles. We can foresee that within the coming decades, or we can say as from today itself, Mauritius can't be considered as a small island, or an isolated one because the area that will be under our control, will be ours, will be not less than 850,000 square miles, plus the 750 square miles of land and the other area that we possess in the Indian Ocean, from the north, taking Agalega, St. Brandon, Rodrigues and other islands of the Indian Ocean.

Now that we are extending our territorial waters it has been suggested that there will be problems in order to control our territories, to control foreign powers getting in our waters or to control foreign nations that are going to exploit our sea resources; but here, Sir, there is one sentence that we may quote: " Rome was not built in one day ", because, it is today that we are legislating; it was only nine years ago that we became independent. We have so far striven very hard to stand on our own feet and today we are laying the foundation, from my point of view, for a very bright future, because we are going to have under our control such a wide part of the Indian Ocean, having in its space great resources. As we know quite well, there are many natural resources: gas and other deposits that will be ours, that we are going to exploit for our population which is growing every day. We can't go on exploiting the soil that we have because there will be a maximum of the output, therefore the day will come when we Mauritians, it may be within the coming decades or in the year 2000, when Mauritians will go to the sea for their living and they will return on land perhaps to sleep at night because generally when you are going to

think about it, perhaps it won't come true, but this Bill reminds me of a grandfather who planted a mango-tree without the hope of reaping or eating the fruit. It is justly done and it is going to be of a very great advantage to our country.

Now, Sir, the problems of protection crop up. Of course we do not have Coastal Guards. We have got only Fisheries Guards to protect our lagoons. They are here to prevent people from doing illegal fishing. But, of course, we must have a fleet which will be responsible not only for protecting our coast, but also for seeing that foreign vessels do not come to exploit our seas.

Before coming with this Bill in Parliament, let the House be assured that these problems have been considered and that we are going to see that our resources, our waters, our territories will be protected.

And we have got our research section where we have got many scientists attached to the Ministry of Fisheries. They have been accompanying ships of the FAO and other countries to do research work. We are going to have a laboratory of our own and we are going to expand the one that we have and we are going to have all research work done in order to give all information to all our nationals for the exploitation of these zones.

Now, Sir, the hon. Leader of the Opposition, as well as the hon. First Member for Belle Rose and Quatre Bornes (Mr. Bérenger) wanted to have an explanation about our position in connection with Saya de Malha bank. If you are going to take into consideration the 200 mile limit, you will see that the Saya de Malha bank is an extension of our territory. There is one point that must be taken into consideration, because the Bill states that the area of the continental shelf upon which we have jurisdiction will be extended. Therefore the problem will be solved because the soil of Mauritius is basaltic and that of Seychelles is granitic. If the soil of the Saya de Malha bank is found to be basaltic, therefore there is no question, it is Mauritian.

Sir, in connection with disputes about islands' territories, if hon. Members had read between the lines, they would have seen what are the provisions made and before resuming my seat, I would perhaps assure the House that as they are keen to have control upon all the territories, and they are not the only ones because we too we have the same interests and time will see that whether our territories will be ours or not, because there was a time when Britannia was ruling the waves, today it is not doing it. Who will know that Mauritius will be ruling the Indian Ocean ?

Thank you, Sir.

The Minister of Economic Planning and Development (Mr. R. Ghurburrun) : Sir, I just want to speak on two principles only. which I think will be of interest to the House.

In the first place, I look at it from the economic development point of view. We have found out that the ocean bed has possibilities of creating a second world economic revolution as we have known. There is only one country in the world today, which has not only carried out research and found out that the sea bed contains metals and gas oil to the tune of trillions and trillions of US dollars: that country, Sir, is America. They have not only carried out a survey, they have already set up their factory and they have

also worked on it and are producing them. The other countries, England, France and Japan are very much in the way of coming to finalising or putting the last touch to their technology. This is why the international discussion which is going on today, is not only to discuss the extension of the zone. Today almost all the countries in the world have already declared their economic zone. But the problem that we are discussing at the moment with the United Nations is how to control it precisely. There is an idea which has been set up, details have been worked out that we should have an international authority which would secure the control — because once the treaty is passed, all the countries have put their signature to it and therefore they are bound, thus a certain amount of control would be secured through that authority. Should there be any violation of limits or any of the laws we have passed, then we can resort to that authority. We hope that this authority would be set up as soon as possible.

As far as the small islands are concerned, I just want to mention them, when we extend our 200 miles from the baseline, it is not only from the Island of Mauritius, it is from the State of Mauritius. For all the islands we have to take 200 miles from the baseline and that is being worked out as a matter of detail. I do not think anybody has really come through to count what it really amounts to, but this exercise is more a matter of detail, we consider. Thank you, Sir.

The Prime Minister : Well Sir, this has been an interesting debate, but as hon. Members know, we are not only dealing with honest nations and good statesmen but also with selfish nations which rule over selfish territories. And there is, a creole saying in that connestion which goes : *' Bœuf dans di sable, chaquène guette so li yeux '*. However much we would like to co-operate with other nations — we have always co-operated — we are surrounded by selfish, grabbing nations, and therefore we must be alive to that. That is the first point to consider.

And if I were to follow the assertions of the hon. First Member for Belle Rose and Quatre Bornes (Mr. Bérenger) and take him seriously, I am of the view that even President Carter cannot fulfil what he thinks we should do, and neither I think Soviet Russia. We must not think that because one nation is towards the left or others towards the right that we will get every thing adjusted such wise that we will profit. We have to navigate. We have to use our wits and senses to do the best we can. We did not succeed with the British with regard to Diego Garcia. We did not know what was in fact the outcome. I must plead ignorance. Nobody was aware. Everybody has become wise after the event, Sir. And today anyone can put on the boots of the hon. First Member for Belle Rose and Quatre Bornes and not be any wiser, not be any stronger, not be any more informed than we are or they are.

With regard to the second point raised by the hon. Leader of the Opposition, I must say that we have reserved for whatever that is worth our mineral prospecting and fishing rights over the island, around the island, to the extent that we can assert. In fact it is not by asserting certain principles that we can get adjustments to them.

As far as our fishing rights are concerned the fact is the Government of the BIOT has accepted them. I do not think

there is any dispute with our neighbours, as far as I know. The hon. the First Member for Belle Rose and Quatre Bornes (Mr. Bérenger) must have been misinformed. I do not know. There is no dispute between Seychelles and Mauritius. I think, when the President of Seychelles made his statement, he made it quite clear that there was no dispute about the Saya de Malha bank. I think it is beyond dispute that our sovereign rights extend over that.

With regard to the small islands, well I do not know. We can always discuss that and, in fact, we are discussing. We are pressing for everyone of our islands to generate maritime spaces. The third world countries are opposing that foreign dominated islands should generate maritime spaces. You see we are in the position that land territories, specially territories which have no access to the sea, think that the wealth of the sea should also belong to them. I do not mind that, provided they also share their wealth with me. When they would share the wealth of their own territories with me, then I shall be ready to share our maritime spaces with them. *Donnant, donnant !*

In any case, there is no difference of opinion with regard to Agalega. Agalega belongs to us, we have purchased it with cash money.

And with regard to Tromelin, this is the only territory to which we lay claim and to which France also lays claim. But we have already informed the French Government that if we were to look at the earlier maps of the world, when we were British and we were making use of Tromelin as a communication centre, for weather at least and for other forms of telecommunications, so therefore, I think by right it belongs to Mauritius and not to any other country. Of course, we will have to discuss it with a friendly country like France to which we have made request, and we think, we hope at least, that will be acceptable.

With regard to Reunion, Sir, Reunion is as old as Mauritius. We were Sister Islands. Reunion is French Territory and Mauritius is an independent sovereign State. I think the median line principle will no doubt apply here, as in other cases. We are not against regional agreements with any country but, as I said, we must not think that one country or another is going to give up any of its rights to help Mauritius. But we are prepared to enter into regional agreements with any country in the Indian Ocean. In fact we have always opened our hands of friendships. Of course, all this will be done subject to discussions with them.

With regard to the delimitation of the Indian Ocean, provision is already made in this Bill and when we come to the committee stage we can deal with it. My hon. Friend, the First Member for Belle Rose and Quatre Bornes (Mr. Bérenger) is always trying to harp on the string that Seychelles has done better by taking away the islands which belonged to the BIOT. My hon. Friend has been born a bit late in history. Seychelles has profited from our experience. People must not forget that and, in fact, our advice and consultations, which were available to Seychelles, were not available to us.

Sir Harold Walter : We gave them the copy, Sir.

The Prime Minister : Well, leave that alone.

We had full consultations and what we ourselves could not achieve, we gave the advice and whatever was available to Seychelles.

(*Interruption*)

Mr. Speaker : I would ask hon. Gentlemen to remember this is a winding up speech.

The Prime Minister : I think it is quite clear this is in itself a historic day as one of my Colleagues on the front Bench has said. And let us hope this is a beginning of a more self-contained Mauritian State. But I must immediately say, it is not an empire, it is a State to which we must all adhere, all agree, and which we must all protect and not allow selfish motives to prevail over this patrimony which is Mauritian and for which we have been working together. And let us hope that people will not leave us in the lurch as other people have done in the past.

Question put and agreed to.

Bill read a second time and committed.

THE MAURITIUS HOUSING CORPORATION (AMENDMENT) BILL (No. XIX of 1977)

Order for second reading read.

Sir Veerasamy Ringadoo : Sir, I beg to move that the Mauritius Housing Corporation (Amendment) Bill (No. XIX of 1977) be read a *second* time.

The object of this Bill is tow-fold. First, it empowers the Corporation to make loans up to 100% of the value of the property to be mortgaged so as to encourage housing construction. The Bill also repeals the provision in the law requiring a borrower, who repays his loan in advance, to give one month's notice and to pay an indemnity to the Corporation. This amendment will encourage repayment of loans ahead of schedule and accelerate the revolving of funds for assisting new borrowers.

With these remarks, Sir, I commend the Bill to the House.

The Prime Minister *rose* and *seconded.*

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, we on this side of the House welcome the amendment that is being brought. We know the problem of housing and we feel that this will be an incentive for persons who own some land to put up buildings. And we also appreciate the fact that those persons who can afford to pay back what they owe ahead of schedule will be exempted from the indemnity that is being claimed.

We welcome the Bill, Sir.

Question put and agreed to.

Bill read a second time and committed.

THE GAMING (AMENDMENT) BILL (No. XX of 1977)

Order for second reading read.

The Minister of Finance (Sir Veerasamy Ringadoo) : Sir, I beg to move that the Gaming (Amendment) Bill (No. XX of 1977) be read a *second* time.

The Bill is to give effect to the various fiscal measures on gambling which were announced in the Budget Speech. The House will recall that the proposed measures were, *inter alia*, to increase the licence fees for gaming houses from Rs. 30,000 to Rs. 100,000 per annum for an 'A' licence, and from Rs. 15,000 to Rs. 25,000 per annum for a 'B' licence. The fee for a 'C' licence will be left

unchanged, but the 35% tax on gross takings for such establishments will be replaced by a tax of Rs. 100 per month.

The tax on pool promoters will be raised from 25% to 35% of the *gross* stakes, against abolition of income tax on net profits. This measure will not, however, affect the public, as the Bill at the same time provides that the allowance for commission and expenses to promoters will be reduced from 30% to 20% of gross stakes. In other words, winners will continue to have the same percentage of the *gross stakes.*

The tax on bookmakers is also to be raised from Rs. 500 to Rs. 1,000 per race meeting for those operating inside the stand. For the others, the increase will be from Rs. 500 to Rs. 600 per race meeting.

I had originally proposed to raise the tax on sweepstakes by 10% i.e. from 25% to 35%. In view of the fact that winnings from sweepstakes are relatively small, I propose to increase the tax by only 5% instead of 10%.

The opportunity has been taken to consolidate the existing law on gambling. Holders of gaming house licences, pool promoters and bookmakers will henceforth be required to furnish a cash security to the Accountant-General. This is to better protect both the public and revenue in case of default.

The Bill also makes provision for the Minister of Finance to organise lotteries, either directly or through a Committee for such purposes as he may approve. Funds derived from these lotteries, after deduction of expenses and prize money, will be paid into the Consolidated Fund. At the same time Government will assume responsibility for assisting ex-servicemen.

Finally, in order to protect our youngsters, admission to gaming houses will be limited to those who are 21 years of age or over.

With these comments, Sir, I commend the Bill to the House.

The Prime Minister *rose* and *seconded.*

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, so far as we can see the object of this Bill is to increase the revenue of Government. Of course, as it is in conformity with what had been foreseen in the budget speech, we cannot say very much against it but we consider that in fact the prime motive that ought to have been behind this Bill is one that should have discouraged betting as a whole. Specially in so far as young persons are concerned, we note that more and more people are getting used to betting and it is becoming part and parcel of their life. We know in many cases there have been persons who have become in fact addicts and families have been ruined as a result of excess gambling. Therefore, if the object behind is only to secure more money, in so far as pool promoting is concerned, we know that there is a lot of exchange leaving this country for overseas and may be that the Government wants to discourage this sort of gambling in order to prevent this exodus of capital from Mauritius. However, we must not forget that to-day we have only as far as I have been given to understand, one Association or one person who is dealing in that business of international football pool promotion in Mauritius. In fact there was another one who has given up and from what we have been given to understand, it is because

The object of this Bill is to extend this benefit to any person in relation to whom a retiring benefit is payable under —

(i) The Municipality Pensions Ordinance;

(ii) The Local Bodies Pensions Ordinance, 1945 ;

(iii) The Local Authority Employees (Allowances) Regulations, 1964 ;

To meet this object, it is proposed to amend the Schedule to the principal Act by adding the following :

10. The Municipality Pensions Ordinance

11. The Local Bodies Pensions Ordinance, 1945

12. The Local Authorities Employees (Allowances) Regulations, 1964.

With these words, Sir, I commend the Bill to the House.

Sir Veerasamy Ringadoo *rose* and *seconded.*

Mr. Jugnauth : Sir, I should like to make only one remark that, of course, the Government should move very cautiously, but, in my opinion, Government is moving very slowly. What we see now is that it is being extended to certain corporate bodies. Well, we have a mass of people working in the private sector. I think, we must think about them, and see how the situation can be remedied.

Mr. J. C. de L'Estrac (First Member for Stanley and Rose Hill) : M. le président, l'heure à laquelle nous sommes arrivés, m'empêchera de faire un long discours. Je voulais simplement attirer l'attention du ministre sur le fait qu'il y a une catégorie d'employés municipaux dont les droits sont lésés, et que l'occasion était présentée dans le cas de ce projet de loi de retablir la situation. En effet, le Gouvernement est au courant de la question puisque en octobre de l'année dernière un projet de loi avait été préparé par le Parquet, et le Gouvernement avait donné son accord, mais pour des raisons qui n'ont pas été expliquées, finalement le projet de loi n'est pas arrivé devant la Chambre. Il s'agit des cas de quelques employés municipaux qui ont été des employés du Gouvernement et qui par la suite ont eu a démissioner du Gouvernement pour prendre de l'emploi dans les administrations municipales. Il y en a un certain nombre à Port Louis, et dans les cinq municipalités, en particulier à Vacoas-Phœnix. Et, un problème se pose au sujet de la question de pension. Et, l'idée du projet de loi qui avait été étudié par le Gouvernement était, je le cite :

> "In order that service done by an officer with the Government of Mauritius prior to his appointment to a pensionable office in a local authority, may, in certain circumstances be taken into account as pensionable service for the purposes of this Ordinance."

J'aurais voulu savoir, donc, du ministre si ce projet de loi a été complètement abandonné, et si donc les employés du Gouvernement qui par la suite sont devenus des employés municipaux ont perdu tous leurs droits. Je voudrais aussi attirer l'attention du ministre sur le cas douloureux d'un employé, en particulier, qui était entré dans la fonction publique en 1948, et qui démissiona pour prendre de l'emploi dans la Municipalité de Vacoas-Phœnix en 1966, et qui est mort en 1974, en perdant, donc, tous ses droits, parcequ'il n'avait pas fait, entre temps, les dix ans qui sont nécessaires dans la loi. J'aurais voulu donc que le ministre nous donne quelques explications sur cette question. Merci, M. le président.

Mr. Bhayat : Mr. Speaker, Sir, I would like to take two points on this Bill: firstly, although we welcome it, we must say that it comes at a very late hour not only in time to-day, but also in terms of months and even years. The effect of this Bill will be that at last pensioners of the municipalities of Port Louis and the other municipalities will have an increase in their pension and in their monthly payments. But, one difficulty will arise in that the Bill taking effect as from 1st January 1974, a fairly heavy amount will become due to the several hundred pensioners in Port Louis and also elsewhere. Since we are drawing to the close of the financial year, it is clear that it will not be possible within this year or even within the Budget of next year, for the Municipalities to foot the bill that will arise as a result of this piece of legislation. My first point, therefore, is to ensure from the Minister that funds will be made available in respect of all past years to-date so that payments can be effected promptly to all those to whom a benefit could be due under this Bill.

Secondly, Sir, while I am thinking of the pensioners of the Municipalities, particularly those of Port Louis, the case comes to my mind of 125 odd employees of the Municipality of Port Louis who, under the Municipality Pensions Ordinance, which is mentioned in section 3 of this Bill are deprived of pension rights in respect of employment prior to 1971 as a result of certain happenings in December. I urge the Minister to look into this matter to see that those persons, in fact, enjoy all their pension rights prior to their dismissal in December 1971. There is a decision of the Municipal Council to that effect, and here, I urge the Minister to see to it that their pension rights are restored.

The Minister of Local Government (Mr. Espitalier-Noel) : Mr. Speaker, Sir, I have taken good note of the remarks made by Members of the Opposition. An hon. Member has put me several questions concerning the case of Government employees coming to the Municipalities. I think, this is out of the scope of this Bill.

Concerning my Friend the Lord Mayor I can assure him that I am aware of the problem that this will pose, and that we will look into this matter. Thank you.

Question put and agreed to.

Bill read a second time and committed.

COMMITTEE STAGE

(*The Deputy Speaker in the Chair*)

The Property Restriction (Amdt.) Bill (No. XV of 1977)

Clause 1 *ordered to stand part of the Bill.*

At 1.20 *p.m. the sitting was suspended.*

On the Committee resuming at 2.20 p.m. with the Deputy Speaker in the Chair.

Consideration of the Property Restriction (Amendment) Bill (No. XV of 1977) *was resumed.*

The Bill was agreed to.

The following Bills were considered and agreed to :

(i) *The Maritime Zones Bill (No. XVII of 1977)*

(ii) *The Mauritius Housing Corporation (Amdt.) Bill (No. XIX of 1977)*

THE GAMING (AMDT.) BILL (No. XX of 1977)

Clauses 1 to 12 ordered to stand part of the Bill.

Clause 13 (Section 29 of the Principal Act amended).

Motion made and question proposed: that the clause stand part of the Bill.

Sir Veerasamy Ringadoo : I move for the deletion of sub-clause (a), in order that this provision does not affect the *pari mutuel*. I have received representations that an increase may affect the working of this type of lottery. Therefore the section will read :

" Section 29 of the principal Act is amended by deleting subsection (2) ..." etc.

Amendment agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14 (Section 29A added to the Principal Act.)

Motion made and question proposed: " that the clause stand part of the Bill."

Sir Veerasamy Ringadoo : Mr. Chairman, in the second line, instead of seventy-five thousand rupees, I have received a lot of representations from bookmakers, some are small, some are big, and I have thought that it would meet the justice of the case if I reduce it to Rs. 40,000.

Amendment agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clauses 15 to 24 ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

The Patents (Amdt.) Bill (No. XVI of 1977) was considered and agreed to.

THE ROAD TRAFFIC (AMDT.) BILL (No. XVIII of 1977)

Clauses 1 to 6 ordered to stand part of the Bill.

Clause 7 (Transitional provision).

Motion made and question proposed: " that the clause stand part of the Bill."

Mr. Bussier : Sir, I move that clause 7 be amended so as to delete the words " date of publication of the Act " and replace them by " the 28th of May 1977 ".

Mr. Jugnauth : Sir, I am really surprised that the Minister is coming with this amendemnt at this late hour. I should like to know what has prompted him to come with this amendment because whatever excess people have got to pay, I think it is quite proper that they have to pay as from the date of the coming into force, of the publication of the law, for example in cases where people have already paid their licence duties, does it mean that they will have to pay arrears and extra ?

Mr. Bussier : No.

Mr. Jugnauth : Licences that will come to expire by the end of June for example, will they have to pay as from the end of May ?

Mr. Bussier : No.

Mr. Jugnauth : But what is the idea behind this, to make it the 28th of May, may we know what is the reason ?

Mr. Bussier : The Bill was published on the 27th, that is to say, before the date of publication of the Act, we are only giving the exact date of publication, that is all. It is not a change in substance.

Amendment agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

On the Schedule.

Mr. Bussier : Sir, I move that in sub-clause 4, " any autocycle Rs. 20.00," that the words and ciphers Rs. 5.50 appearing just after it be deleted.

Amendment agreed to.

The Schedule, as amended, ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

The Pensions (Aggregation of Cost of Living Allowance) (Amendment) Bill (No. VII of 1977) was considered and agreed to.

On the Assembly resuming with the Deputy Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

On motion made and seconded, the following Bills were read the third time and passed :

(a) The Property Restriction (Amendment) Bill (No. XV of 1977);

(b) The Maritime Zones Bill (No. XVII of 1977);

(c) The Mauritius Housing Corporation (Amendment) Bill (No. XIX of 1977);

(d) The Gaming (Amendment) Bill (No. XX of 1977);

(e) The Patents (Amendment) Bill (No. XVI of 1977);

(f) The Road Traffic (Amendment) Bill (No. XVIII of 1977);

(g) The Pensions (Aggregation of Cost of Living Allowance) (Amendment) Bill (No. VII of 1977)

CIVIL ESTABLISHMENT (AMDT. No. 2) ORDER 1977

The debate was resumed on the motion of the Prime Minister.

Mr. Jugnauth : Sir, we have no comments to make.

Question put and agreed to.

Annex 79

Minute dated 1 July 1977 from [name redacted], Legal Advisers to Mr. [name redacted], East African Department, UK Foreign and Commonwealth Office, "BIOT: Fishing Rights"

RECEIVED IN REGISTRY
- 6 JUL 1977
JE 1115/2

Mr [redacted] (East African Department)

BIOT: FISHING RESTRICTIONS

1. The answers to your questions are as follows:

(a) I enclose a copy of the Fisheries Limits Ordinance as assented. You will note that it is different to the draft. Any fishing boat other than a fishing boat owned wholly by a resident in BIOT commits an offence if it fishes within fishing limits. Thus offences can be committed by British and Mauritius boats unless the owner is resident in BIOT.

The only exemption is in respect of the continuance of fishing traditionally carried on in the fishing limits by foreign fishing boats. In my opinion that means that the legislation does not provide for exemption for foreign fishing boats which have not traditionally fished. I expect that the exemptic was specifically framed for Mauritius/Seychelles boats. If Korea has not traditionally fished the area then the legislation does not enable an exemption to be made and the legislation would have to be amended.

(b) The reference in paragraph 13 of the 1976 Exchange of Notes to fisheries imposes on HMG the obligation not to permit fishing in those areas of the waters, continental shelf and sea-bed around Diego over which we exercise sovereign rights unless certain agreements are reached. This is a little difficult to interpret but in the first instance HMG exercises sovereign rights in a 12 mile limit in the waters of Diego. Thus no permit can be issued there. It is arguable that the words prevent fishing in the continental shelf and sea-bed over which we exercise sovereign rights. However, the words "in or under" applied to the words "continental shelf and sea-bed" do not permit that interpretation. We are therefore only bound to come to an agreement in respect of the waters within the current 12 miles limit. If it is now our policy to exercise sovereign rights over a 200 mile zone then not withstanding that the BIOT law is not changed we may be bound to come to an agreement as regards waters within that 200 mile zone.

(c) There is a discrepancy between the record at G and the letter of 24 March at G as regards fishing rights. In the first case the record shows that the maximum obligation on HMG was to show that fishing rights remained available to Mauritius so far as practicable. In the second case the PM in acknowledging the rest of the Ilois payment reserved to Mauritius fishing rights. I find it difficult to interpret the legal status of the letter. It is a receipt and yet it purports to set out conditions. The conditions appear to be ex post facto. In my opinion I do not consider that the letter overrides the record of the meeting. Certainly in the debate in the Legislative Assembly (see Annex C behind G) the only recorded obligation in respect of fishing was that HMG would safeguard all fishing facilities around Diego.

Assuming that Mauritius has not reserved to itself fishing rights we have to interpret what paragraph 22(vi) means. First of all it seems to me that the obligation was to ensure that fishing rights remained available. In order to remain available I do not think that all or any part of such rights can be handed to a third party. In my opinion we are bound not to give the rights or any part of them to a third party. However, that obligation was weakened by the words "so far as practicable". It could be argued that this only allows an outlet for BIOT residents. On the other hand it could be argued that it should provide an outlet for traditional fishermen such as Seychellois or

/others

others. It could also be interpreted to mean that BIOT could license fisheries in order to secure revenue. I feel that that would be stretching the words considerably. On the other hand if there were no Mauritian fishermen able or wishing to fish and BIOT wished to license for revenue purposes then I believe that BIOT could do so.

[redacted]
Legal Advisers

1 July 1977

Annex 80

Third United Nations Conference on the Law of the Sea, Summary Records of the Plenary and Second Committee, Official Records Vol. XI:

- 112th Plenary Meeting, 25 April 1979, A/CONF.62/SR.112
- 57th Meeting of the Second Committee, 24 April 1979, A/CONF.62/C.2/SR.57
- 58th Meeting of the Second Committee, 24 April 1979, A/CONF.62/C.2/SR.58

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.112

112th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*

112th meeting

Wednesday, 25 April 1979, at 4.10 p.m.

Chairman: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the final act of the Conference (*continued*)

1. Mr. CASTAÑEDA (Mexico), speaking on behalf of the group of coastal States, said that the coastal States had always taken the view that disputes which might arise from the exercise of their sovereign rights within their economic zones should not be subject to a compulsory dispute settlement procedure. Furthermore, the informal composite negotiating text[1] gave coastal States discretionary powers in regard to the exercise of sovereign rights. However, in a constructive spirit and desiring to achieve a solution which would be acceptable to all, the group of coastal States had agreed to negotiate with other States interested in that issue. The negotiations had culminated in the establishment of Negotiating Group 5 which had arrived at a compromise solution acceptable to the two main groups of countries, namely the coastal States and the land-locked and geographically disadvantaged States. The coastal States had made many important concessions, including acceptance of compulsory conciliation in certain types of dispute. However, that was the maximum concession they could make, and they were unable to modify their position further in any respect. Accordingly, it would be quite pointless to re-open the negotiations. In conclusion, his delegation and the delegations of the coastal States wished to pay tribute to the Chairman of Negotiating Group 5 for his work.

2. Mr. HAFNER (Austria) said that his delegation had consistently maintained the view that the judicial settlements of disputes arising out of the application or interpretation of the convention should be binding. However, it believed that at the present stage the Conference should consider the compromise proposed by Negotiating Group 5 as a useful step in the direction of a consensus. In conclusion, his delegation wished to express its sincere gratitude to the Chairman of the Group.

3. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that his delegation, like other members of the group of coastal States, considered that the rights and powers of coastal States within the 200-mile zone should be fully respected. Since those rights were sovereign, any dispute arising out of them should be settled by national courts or tribunals. In principle, his delegation viewed with sympathy the report of Negotiating Group 5 regarding recourse to compulsory conciliation. However, it could not go beyond its present position, and believed that it was unnecessary to re-open the debate on the subject which was, moreover, closely linked with matters under consideration elsewhere, particularly in Negotiating Groups 4, 6 and 7. His delegation was not in favour of splitting up the global negotiating package through the endorsement of partial consensuses which might upset the balance of the entire package. It believed that the report of Negotiating Group 5 should be kept in reserve, pending the reports of the other groups, and it wished to express its appreciation to the Chairman of Negotiating Group 5 for his valuable work.

4. Mr. ARIAS SCHREIBER (Peru) said that, when the compromise text (NG5/16)[2] had been submitted by the Chairman of Negotiating Group 5 to the Conference at its seventh session, it had been approved by the group of coastal States, then consisting of 80 countries, and by several other delegations. Certain delegations had, however, entered some formal objections.

5. On the precedent of the decision taken with respect to the report of Negotiating Group 4, his delegation considered that the compromise text commanded the widespread and substantial report needed for inclusion in the revised negotiating text. The fact that some States dissented from that view should not prevent its inclusion.

6. Mr. DE LACHARRIÈRE (France) said that his delegation considered that the compromise text submitted by the Chairman of Negotiating Group 5 should be included in any revision of the negotiating text.

7. Mr. MONNIER (Switzerland) observed that the spokesman for the group of coastal States had stated that the text represented the maximum concession which could be envisaged. His own delegation fully concurred, though possibly for diametrically opposite reasons.

8. Since the text before the Conference constituted the only acceptable compromise formula, it satisfied the criteria for inclusion in any revision of the negotiating text.

9. Mr. BEESLEY (Canada) said that his delegation's position on the settlement of disputes had been set out in a statement to the Conference three years previously.[3] The basic objective of the Canadian Government was to ensure the inclusion in the convention of a comprehensive system of compulsory dispute settlement procedures.

10. His delegation agreed, of course, that consideration should be given to certain matters requiring treatment of a different type, particularly the exercise of agreed discretionary powers by coastal States in respect of their sovereign rights in the exclusive economic zone. Nevertheless, it was prepared to accept third-party adjudication in respect of gross abuse by coastal States in the exercise of such rights or powers, on the assumption that user States would be subject to the same type of provision in respect of the exercise of their rights and duties.

11. It was regrettable that the notion of abuse of power had not proved generally acceptable. In its place, the Chairman of Negotiating Group 5 had presented a text which, he thought, offered a reasonable prospect of consensus. The Canadian delegation accepted that assessment.

12. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that several different views regarding dispute settlement procedures had been expressed in Negotiating Group 5, but, in his delegation's opinion, they were not all reflected in the compromise text submitted by the Chairman of the Group. His own delegation's view was close to that expressed by the representative of Ecuador. In the circumstances, he did not think that the compromise text commanded enough support to warrant its inclusion in the revised negotiating text.

13. Mr. RICCHERI (Argentina) said that the compromise text constituted the maximum concession that coastal States were able to make on the question of procedures for the settlement of disputes concerning fishing in the economic zone. His delegation, while accepting that the text satisfied the criteria for inclusion in the revised negotiating text, agreed

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

[2] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 120.

[3] *Ibid.*, vol. V (United Nations publication, Sales No. E.76.V.8), Plenary Meetings, 65th meeting.

with the representative of Ecuador that all texts approved to date formed part of a package deal.

14. The PRESIDENT asked whether the delegation of Ecuador regarded the compromise formula as suitable for inclusion in the revised negotiating text.

15. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that, although his delegation regarded the report of Negotiating Group 5 as being intimately related to the reports of Negotiating Groups 4, 6 and 7, it would accept the view of the majority regarding its inclusion or otherwise in the revised negotiating text.

16. The PRESIDENT said that it was clear from the statements made that the compromise text presented by the Chairman of Negotiating Group 5 satisfied the criteria for inclusion in any revision of the negotiating text.

17. He invited the Conference to consider the report of the Chairman of Negotiating Group 7 (NG7/39).

18. Mr. BEESLEY (Canada) said that it was the considered view of his delegation that procedures for the settlement of disputes on maritime boundary issues could not be treated in isolation but had to be considered as part of a comprehensive package. It was essential that objective delimitation criteria should be included in the convention so that States could settle their maritime boundaries in a manner free from subjective considerations. The further the Conference went towards elusive and subjective concepts divorced from objective criteria, the more essential it was to establish a third-party dispute settlement mechanism to give legal content to such elastic concepts.

19. The proposal by the Chairman of Negotiating Group 7 (NG7/39) failed to meet the essential need of assured procedures for resolving once and for all the conflicts regarding maritime boundaries. The suggested text might serve as a basis for further discussion, but the final decision regarding the acceptability of a dispute settlement provision had to be reached in the light of the inclusion of objective delimitation criteria in the convention.

20. Mr. LACLETA (Spain), speaking as co-ordinator of the sponsors of document NG7/2, said that those delegations considered that there was a close link between the three aspects of the delimitation problem — namely, delimitation criteria, interim measures and the settlement of disputes. It was obvious that the greater the subjectivity of the delimitation criteria, the greater the need for a binding procedure for settlement of disputes.

21. It was stated in the report of the Chairman of Negotiating Group 7 that "several delegations still remain determined to advocate compulsory and binding procedures". That was not an accurate reflection of the situation and he suggested that the words "several delegations" should be replaced by the words "many delegations".

22. The report also contained a personal proposal by the Chairman regarding the possible redrafting of article 297, paragraph 1 (*a*). The delegations which he represented thought that that formulation was absolutely inadequate, since it proposed only conciliation among the parties, followed by recourse to other procedures.

23. With respect to the statement in the report that "proposals were made for the modification of the *chapeau* of article 297 and for the deletion of paragraph 2 of article 74" and that "no conclusions were drawn on these points", he wished to emphasize that the reason why no conclusions had been reached was that there had been little support for the proposals concerned.

24. The delegations he represented agreed with the conclusions of the Chairman of Negotiating Group 7, especially with respect to the general feeling in the Group that negotiations on the issues still pending solution should be continued.

25. Mr. HOLLANDER (Israel) said, with regard to the dispute settlement aspect of the report of the Chairman of Negotiating Group 7, he wished to refer to his delegation's statement at the 57th meeting of the Second Committee. For the reasons given in that statement, his delegation believed that the inclusion of the settlement of disputes regarding delimitation was an unnecessary encumbrance on the terms of reference of the Group, and that that issue might well be removed from the Group's terms of reference.

26. In his delegation's view, there was no inherent difference between disputes relating to maritime boundaries and disputes relating to land frontiers, since both dealt with the spaces over which sovereignty or sovereign rights might be exercised. His delegation could see no objective reason for singling out some maritime delimitation disputes for special treatment.

27. Mr. IRWIN (United States of America) said that his delegation still considered it premature to attempt to revise article 297, paragraph 1 (*a*).

28. Mr. ZEGERS (Chile) said that almost all the proposals submitted to Negotiating Group 7 contained a compulsory dispute settlement element. Unfortunately, the Chairman of the Group had selected a formulation for article 297, paragraph 1 (*a*), which not only appeared to exclude compulsory settlement of disputes but might even exclude compulsory conciliation. The formulation related only to future disputes; it established an obligation to agree to compulsory conciliation only within a "reasonable period of time" whose duration was not specified, and it contained no reference settlement of disputes concerning territories and islands. In short, either on the grounds that all disputes involved past elements or a territorial element, or on the grounds that the "reasonable period of time" was not specified, a party would be able to exclude itself not only from the compulsory dispute settlement but also from compulsory conciliation.

29. The formulation proposed by the Chairman of Negotiating Group 7 did not reflect either the discussions that had taken place in that Group or the general situation in the Conference. The Chairman of the Group thus appeared to have failed to comply with his mandate to reflect what had occurred in the negotiations. Consequently, the Chilean delegation would regard the formulation in question as null and void. However, his delegation wished to reiterate its view that the work of the Group had proved useful and that negotiations within the Group should continue.

30. Mr. STAVROPOULOS (Greece) said that his delegation did not consider the formulation of article 297, paragraph 1 (*a*), proposed by the Chairman of Negotiating Group 7 to be satisfactory, mainly because the formulation addressed itself to the future and because the conciliation procedure it envisaged was inappropriate because delimitation was not a political but a legal issue and a binding adjudication could be made only by a legal body. Furthermore, the last sentence of the formulation, with its reference to "mutual consent" seemed incompatible with the idea of compulsory adjudication. In the view of his delegation, since no conclusion acceptable to all parties was yet in sight, work should continue on the question.

31. Mr. SAMPER (Colombia) said that his delegation generally agreed with the views expressed by the delegations of Spain, Canada and Chile. He recalled the tripartite mandate of Negotiating Group 7, and drew attention to paragraph 10 of document A/CONF.62/62[4] governing modifications or revisions to the informal composite negotiating text. His delegation considered that the text submitted in respect of paragraph 1 of article 74 and of article 83 seemed to indicate that some progress had been achieved; however, the formulation suggested in respect of paragraph 3 of those articles was retrogressive and the rule on interim measures needed to be improved. The formulation of article 297, paragraph 1 (*a*), proposed by

[4] *Ibid.*, vol. X, p. 6.

the Chairman of Negotiating Group 7 was completely unacceptable to his delegation since the conciliation procedure it envisaged did not offer sufficient guarantees. It was clear from the Chairman's own statements in the report that the conditions set out in paragraph 10 of document A/CONF.62/62 had not been satisfied. In conclusion, his delegation believed that negotiations on the pending issues, which constituted an indivisible whole, should be continued.

32. Mr. ATAÍDE (Portugal) said that his delegation concurred with the opinion expressed by the Spanish delegation regarding the need for closer and even indissoluble links between delimitation criteria, interim measures and the settlement of disputes. However, his delegation considered that the report of the Chairman of Negotiating Group 7 did not clearly reflect the growing support for the principle of the median-line as a basic principle for determining maritime boundaries between opposite or adjacent States. The median-line concept was in his delegation's view, extremely important for the continuation of the negotiations. In conclusion, his delegation wished to thank the Chairman of the Group for his work.

33. Mr. DE LACHARRIÈRE (France) said that his delegation also wished to congratulate the Chairman of Negotiating Group 7 on the manner in which he had performed his difficult task. It considered that in matters relating to the delimitation of maritime boundaries, there should be a very close link between the establishment of areas, their delimitation, and the procedures for the peaceful settlement of disputes that might arise. The Conference, by introducing into positive law such concepts as that of the economic zone, had at the same time incurred the risk of opening the way to an unending series of disputes between countries which would, in the future, be neighbours by reason of the creation of economic zones. The responsibility of creating the possibility of international disputes, without establishing any procedure whereby those disputes could be settled, was an extremely heavy one. For that reason, his delegation had consistently supported compulsory or binding arbitration. It favoured the retention of the existing provisions in the negotiating text and did not believe that the discussions in the Group warranted a change in its position. Consequently, it considered that the existing wording of the negotiating text should be retained.

34. Mr. COQUIA (Philippines) said that his delegation believed that the formulation proposed by the Chairman of Negotiating Group 7 for article 297, paragraph 1 (*a*), was an improvement on the formulation in the negotiating text, since it envisaged a more friendly procedure for settling disputes, especially in the case of States belonging to the same regional organizations.

35. Mr. FIGUEREDO PLANCHART (Venezuela) said that some representatives appeared to believe that it was possible to achieve the results which Cato had achieved in Rome by repeating *ad nauseam* the phrase *"Delenda est Carthago"*. Today, the Conference was repeatedly being told that States should be brought before an international forum even without their consent, as if such a course of action was a panacea which would solve disputes affecting sovereignty and State security. His delegation believed that such a course was not the right way of achieving consensus in the present, or any other, Conference. It did not object to the use of compulsory dispute settlement procedures; indeed, his country had ratified a number of conventions providing for such procedures and had in the past submitted on various occasions to international arbitration. However, his delegation could not accept a formulation which would, as it were, give international jurisdiction a blank cheque for settling questions affecting the sovereignty and vital interests of its country. His delegation did not reject the criteria proclaimed in Article 33 of the Charter of the United Nations but believed that genuine solutions to disputes affecting State sovereignty could be achieved only by direct agreement between the parties. Consequently, his delegation was opposed to any formulation which established *a priori* an automatic element either in the criteria to be applied in solving a dispute or in the machinery for doing so. It could not accept a formulation which, with respect to questions of delimitation, would establish a binding procedure involving a decision that would be obligatory for the parties. It believed therefore that the formulation submitted by the Chairman of Negotiating Group 7 was a realistic attempt to find a compromise solution.

36. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic) said that at the present meeting a number of delegations had expressed their disagreement with the formulation of article 297, paragraph 1 (*a*), suggested by the Chairman of Negotiating Group 7. It should be noted, however, that in the Group many delegations had agreed that there were no rules of contemporary international law which obliged States to agree to a compulsory procedure for the settlement of disputes. The Chairman of the Group had been right to take that fact into account when preparing his suggested text; any attempt to impose a compulsory procedure would fail.

37. Mr. AL-MOR (United Arab Emirates) said that the proposed formulation of article 297, paragraph 1 (*a*), contained in document NG7/39 reflected the personal opinion of the Chairman of Negotiating Group 7, and not that of the majority of the Group. In view of the opinions expressed by that majority, any attempt to amend the text of article 297 would be premature. No decision could be taken regarding the acceptance or rejection of a proposal on the third-party procedure for the settlement of disputes unless the outcome of negotiations on delimitation criteria and interim measures was generally accepted and unless the content of the relevant rules was very precise and of a universal character.

38. Mr. PAPADOPOULOS (Cyprus) said that the report of the Chairman of Negotiating Group 7 did not accurately reflect the views that had been expressed in the Group. It was encouraging to note, however, that the report did state that the issues dealt with by the Group were closely interrelated and should be considered together as elements of a "package". The majority of delegations shared his delegation's view that provision should be made for an effective, comprehensive and expeditious dispute settlement procedure entailing a binding decision. The proposal put forward by the Chairman did not meet his delegation's minimum requirement, namely that flexibility on the issue would be warranted only if objective criteria and principles governing the median-line were adopted in paragraph 1 of article 74 and of article 83.

39. Mr. NASINOVSKY (Union of Soviet Socialist Republics) stressed the importance of the question of the settlement of disputes concerning delimitation. He could not agree with the representative of Greece that disputes concerning delimitation—in other words, disputes involving the sovereignty of States—had no political significance but were purely legal in nature. His delegation would not accept any provision for the compulsory settlement by a third party of disputes concerning maritime boundaries. The Chairman of Negotiating Group 7 had concluded rightly that contemporary international law did not contain any rules obliging States to submit disputes concerning maritime boundaries to third parties for settlement. It should be noted, in that connexion, that his country did not recognize the compulsory jurisdiction of the International Court of Justice. The formula for article 297, paragraph 1 (*a*), proposed by the Chairman of the Group, which was based on proposals made by various delegations, including those of the United States, Israel and Bulgaria, was the only possible basis on which a compromise on the matter could be reached.

40. Mr. YOLGA (Turkey) said that in the opinion of his delegation States could not be brought before a court against their sovereign will. The question of the settlement of disputes was directly linked to the notion of the sovereignty of States,

as had been affirmed by the International Court of Justice in its decision on the Aegean Sea Continental Shelf Case.[5] It should be noted that approximately 30 delegations had expressed that point of view. Despite the praiseworthy endeavours of Mr. Sohn and the representative of Israel, Negotiating Group 7 had been unable to reach a compromise on the question. It was essential, therefore, that the Group should continue its work on the matter during the next stage of the Conference's work. The ideas of the Chairman of the Group on the subject were realistic and sound. One question that had been fully debated in the Group was that relating to the non-retroactivity of the provisions of the future convention. His delegation had pointed out that the non-retroactivity rule was a general rule of international and domestic law, as was clear from the provisions of article 28 of the Vienna Convention on the Law of Treaties.[6] The new convention should contain a provision on non-retroactivity. As to the question whether a dispute had arisen prior to or after the entry into force of the convention, it should—as a result of Mr. Sohn's paper on the subject—be quite possible to solve that problem. In any case, the solution adopted must not conflict with the general rule of non-retroactivity.

41. Mr. PHAM GIAN (Viet Nam) said that, in the opinion of his delegation, disputes regarding delimitation should be settled through agreement of the parties by means of procedures freely chosen by them. Agreement of the parties was essential for any settlement whether of a definitive or of a provisional nature. That approach to the problem of delimitation of maritime boundaries was in keeping with the principle of the sovereign equality of States, which was set forth in the Charter of the United Nations and was regarded as a fundamental principle of international law. In Negotiating Group 7 many delegations had agreed with the idea expressed by the Chairman of the Group that there was nothing in contemporary international law obliging States to submit boundary disputes to a third party for settlement. A compromise solution might be to oblige the parties concerned to resort to a conciliation commission, whose recommendations would not be binding on the parties. It might be possible to reach a consensus on such a procedure. The proposal put forward by the Chairman should therefore be examined further. In the meantime, his delegation reserved its position on the matter.

42. Mr. SCHNEKENBURGER (Federal Republic of Germany) said that decisions on the delimitation of sea boundaries involved principles of State sovereignty and were of historical and political significance. The vital aspect of the resources of the disputed area greatly affected the economy and welfare of the peoples and States concerned. It was important therefore that, in the absence of an agreed negotiated solution, sea boundary disputes should be settled peacefully. From the outset of the negotiations, his delegation had been in favour of compulsory and binding third-party dispute settlement. The formulation put forward by the Chairman of Negotiating Group 7 was not in conformity with his delegation's position. Moreover, in view of the extensive negotiations held in the Group, that formulation was not realistic. The Group should continue its efforts to find a generally acceptable solution to the problem of the settlement of sea boundary disputes. His delegation was in favour of the existing text in the negotiating text.

43. Mr. MAHMOOD (Pakistan) said that the report of the Chairman of Negotiating Group 7, in so far as it related to dispute settlement, did not accurately reflect the negotiations on that matter in the Group. The compulsory third-party dispute settlement procedure enjoyed widespread support. Furthermore, the formulation suggested by the Chairman of the Group contained many conceptual contradictions; one example was the use of the phrase "shall, by mutual consent". His delegation agreed with those speakers who had said that the future convention should establish a compulsory procedure for the settlement of disputes and that there should be no differentiation between land-related and sea-related disputes. It also agreed that the formulation proposed by the Chairman should be considered as non-existent for further negotiations on the matter.

44. Mr. NOMURA (Japan) said that his Government had made clear its position on the question of dispute settlement in the Conference and in other forums. His Government had always been in favour of a third-party compulsory and binding procedure. His delegation agreed with the Chairman of Negotiating Group 7 that the stage had not been reached when the relevant provision of the negotiating text could be revised and that negotiations on the issue should be continued.

45. Mr. TREVES (Italy) said that, with regard to the substantive rules, his delegation did not share the views expressed by the representative of France, but it agreed with that representative's statement that there was a link between the substantive rules and the rules governing the settlement of disputes. The less satisfactory the substantive rules, the more necessary it was to have good rules governing the settlement of disputes. Since the substantive rules were unsatisfactory both in the negotiating text and in the proposals put forward by the Chairman of Negotiating Group 7, his delegation attached great importance to the existence of a rule providing for obligatory recourse to a system for the settlement of disputes. That was why his delegation saw no reason for changing article 297, paragraph 1 (*a*).

46. Mr. RICCHERI (Argentina) said that although his delegation had certain reservations regarding the report of the Chairman of Negotiating Group 7, it felt that the report should be given careful consideration in future negotiations. His delegation could not agree with some of the statements made by previous speakers to the effect that boundary disputes could be settled only through compulsory and binding procedures. In the Group, several delegations as well as his own had been unable to subscribe to that opinion, and he failed to see how a compromise could be reached if their position, which was reflected in document NG7/39, was disregarded by a group of other delegations.

47. Mr. YANKOV (Bulgaria) said that his delegation fully endorsed the report of the Chairman of Negotiating Group 7. The report objectively reflected the work of the Group. His delegation welcomed the new proposals that had been put forward, and in particular the proposal for the wording of article 297, paragraph 1 (*a*). The proposed new version satisfied the requirements of existing international law concerning the delimitation of State boundaries and could serve as a basis for resolving problems relating to the settlement of maritime boundary disputes. Such problems were highly political and could be solved only by the States concerned through negotiation.

48. Mr. NAPITUPULU (Indonesia) said that it would be difficult for his delegation to accept article 297, paragraph 1 (*a*), as formulated in the negotiating text because it was based on the principle of compulsory and binding settlement of disputes. The formulation suggested by the Chairman of Negotiating Group 7 provided a better basis for futher negotiations on the question.

49. Mr. WANG Tieya (China) said that his delegation's position on the question of the settlement of disputes concerning sea boundary delimitations was quite unambiguous and need not be repeated at the present meeting. At the meeting of the Second Committee on the previous day, his delegation had already commented on the treatment of that question in the report of the Chairman of Negotiating Group 7, and had sug-

[5] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3.

[6] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

gested that further consultations on the matter were necessary. For the moment, he wished only to stress that, in his delegation's view, any compulsory and binding third-party settlement of a dispute concerning sea boundary delimitations must have the consent of all parties to the dispute. Otherwise such a form of settlement would not be acceptable to the Chinese delegation.

50. Mr. KWANG-JUNG SONG (Republic of Korea) said that his delegation had already explained why it believed that the text of article 297, paragraph 1 (*a*), should be retained, and why it considered that disputes must be settled in accordance with compulsory procedures. His delegation was, however, prepared to study in depth the proposal made by the Chairman of Negotiating Group 7 in his report.

51. Mr. SALIBA (Malta) said that the opinion expressed by his delegation in the Second Committee on the question of dispute settlement remained unchanged.

The meeting rose at 6.25 p.m.

113th meeting

Thursday, 26 April 1979, at 11.25 a.m.

Chairman: Mr. H.S. AMERASINGHE.

Organization of work

1. The PRESIDENT said that at its 90th meeting the Conference had taken certain decisions on the organization of its work which were recorded in document A/CONF.62/62.[1] Among other matters, the Conference had taken decisions regarding the revision of the informal composite negotiating text[2] that were recorded in paragraphs 9 to 11 of document A/CONF.62/62, which read as follows:

> "9. The plenary should aim at the completion of all substantive discussions for the production of a draft convention at the seventh session. The work programme adopted by the plenary should provide for the revision of the informal composite negotiating text and the discussion of the revised informal composite negotiating text.
>
> "10. Any modifications or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a chairman of a committee, unless presented to the plenary and found, from the widespread and substantial support prevailing in plenary, to offer a substantially improved prospect of a consensus.
>
> "11. The revision of the informal composite negotiating text should be the collective responsibility of the President and the chairmen of the main committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex-officio*, be kept informed of the manner in which the Conference has proceeded at all stages."

2. At its seventh session, the Conference had not been able to realize the objectives which it had set itself in paragraph 9 of document A/CONF.62/62. Accordingly, the results of the session had been embodied in reports by the chairmen of committees and negotiating groups. Moreover, it did not seem possible at the present stage to effect the kind of revision of the negotiating text envisaged in document A/CONF.62/62, where it was clearly contemplated that such a revision should be the final one, to be followed by formalization of the text so that delegations wishing to do so would be free to propose formal amendments.

3. Yet another session had been devoted to negotiations and a modified negotiating procedure had been adopted at the present session in order to ensure greater concentration in an atmosphere that could be more conducive to progress, without depriving delegations which did not participate in that new forum of negotiations of the right to examine and review the results. It was for that reason that those results were to be treated as *ad referendum*.

4. The principle had been stated more than once—and in his opinion it appeared to be universally accepted—that no delegation's position on a particular issue should be treated as irrevocable until at least all the elements of the "package" as contemplated had formed the subject of agreement. Therefore, every delegation had the right to reserve its position on a particular issue until it had received satisfaction on other issues which it considered to be of vital importance to it. That was the only reasonable interpretation that could be given to the idea of a package deal. If the negotiations held so far produced results which would permit a substantial revision of the negotiating text, a revised text could be produced, but it need not be a final version within the meaning of document A/CONF.62/62—it could in effect be a draft preparatory to such a final revision. In that connexion, he suggested that, if the Conference agreed to produce a new document, such a document should preferably be issued under the symbol ICNT/Rev.1 rather than described as a revised informal composite negotiating text.

5. The chairmen of the committees would now proceed to present their reports on the progress made at the present session. It would then be for the plenary to decide how best the results of the negotiations were to be recorded, whether in the form of a revised text or in some other suitable manner. He recommended that the statements made by the chairmen in presenting their reports should be reproduced *in extenso* in the summary record. The actual reports would, of course, form part of the official records of the Conference.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the final act of the Conference (*continued*)

Report of the Chairman of the Third Committee

6. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, said that the report of the Third Committee had been considered at the Committee's 40th meeting.

7. Since the session of the Conference held at Caracas, the Committee had opted to negotiate fairly in open-ended meet-

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

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

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/C.2/SR.57

57th meeting of the Second Committee

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*

SECOND COMMITTEE

57th meeting

Tuesday, 24 April 1979, at 11 a.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Reports of the Chairmen of Negotiating Groups 4 and 7

1. The CHAIRMAN said that he had convened a meeting of the Second Committee for the purpose of complying with the procedure set out in document A/CONF.62/62,[1] whereby the results of the work of each negotiating group had to be reported to the Chairman of the appropriate Committee and to the President of the Conference. Once that had been done, there were two possible courses of action: the Chairman of the appropriate Committee might wish first to have his Committee consider the results of the negotiations, or the results could be brought direct to the plenary meeting by the President of the Conference. In the case in question, the first of those two courses had been chosen. The purpose of the exercise was to consider the possible inclusion in the revised informal composite negotiating text of formulations proposed by the chairmen of the negotiating groups.[2]

2. In that connexion, he wished to remind representatives that the documents containing the various formulations, whether or not prepared by a chairman of a negotiating group, were informal documents and did not constitute part of the formal results of the Conference. Consequently, it was not possible to amend them formally or to take decisions on them by a vote. Informal suggestions were, of course, acceptable. At the current stage, the Committee was attempting to assess the degree of support for each suggestion in order to decide whether or not the text in question should be included in the revised negotiating text.

3. Mr. NANDAN (Fiji), Chairman of Negotiating Group 4, said that the Group had held one meeting during the current session. It had become apparent, at that meeting, that there was no point in convening further meetings until intensive consultations had been held on the issues involved.

4. In the course of those consultations, numerous comments had been made on the compromise suggestions contained in document NG4/9/Rev.2[3] and various changes to that text had been suggested. A number of countries had expressed concern regarding certain aspects of the text, and an informal proposal had been submitted by Romania and Yugoslavia (C.2/Informal Meeting/41).

5. It had emerged from the consultations that none of the new suggestions commanded sufficient support in Negotiating Group 4 to justify any substantive change in the compromise suggestions. It appeared, moreover, that the text of the compromise suggestions offered a substantially improved prospect of consensus, by comparison with the existing wording of the negotiating text. He had thus informed the Negotiating Group that the compromise suggestions would be submitted for inclusion in the revised negotiating text.

6. Mr. HAMOUD (Iraq) said that intensive consultations had taken place in Negotiating Group 4 and a number of suggestions had been made. In his delegation's view, it would have been useful if those consultations could have continued, since the compromise suggestions by the Chairman of the Negotiating Group in document NG4/9/Rev.2 were not supported by all delegations. Although the document in question was perfectly acceptable as a basis for discussion, it was not suitable for inclusion in the revised negotiating text.

7. The CHAIRMAN said that the main purpose of the meeting was to determine whether or not there was substantial support for a given text. It was not necessary that there should be a consensus in favour of the text, but simply an agreement that the new text had a better chance of commanding a consensus than the wording in the negotiating text.

8. Mr. MHLANGA (Zambia) said he regretted that the consultations in Negotiating Group 4 had not proved very fruitful and that no agreement was yet in sight.

9. The compromise suggestions made by the Chairman of Negotiating Group 4 contained some serious weaknesses and, like the wording of the negotiating text, did not take sufficient account of the interests of land-locked and geographically disadvantaged countries.

10. The compromise suggestions were open to criticism in that their version of article 69 referred only to the living resources of the exclusive economic zone, and not to both living and non-living resources. His delegation was also unable to accept the proposal that land-locked and geographically disadvantaged States should have a right only to an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States, when currently they had equal rights with the coastal States to participate in exploiting the resources of the high seas.

11. Paragraph 2 and other subsequent paragraphs of the proposed text of article 69 referred to the conclusion of bilateral, subregional or regional agreements. If the land-locked and geographically disadvantaged States were merely accorded the right to negotiate with coastal States, that would not be enough, since they were always at a disadvantage in negotiations with coastal States.

12. His delegation had already submitted a proposal for regional or subregional economic zones in which all States of the region or subregion would have equal rights to participate in the exploitation of both living and non-living resources. That proposal, which was contained in document A/CONF.62/C.2/L.97,[4] provided for a fair redistribution of the existing rights of States under the international law of the sea.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

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

[3] *Ibid.*, vol. X, p. 93.

[4] *Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3).

13. In that connexion, he wished to refer to the Report of the Secretary-General[5] which had been presented to the Sea-Bed Committee prior to the convening of the current Conference, and which assessed the economic significance of various proposals. According to that document, a 40-nautical-mile limit would give 59 per cent of available resources to the coastal State and leave 41 per cent in the international area, while a 200-nautical-mile limit would give 87 per cent of available resources to the coastal State, and leave only 13 per cent in the international area. In his delegation's view, those figures constituted ample justification for the introduction of regional zones.

14. Mr. SHARMA (Nepal) said that his delegation still maintained that neither the provisions contained in the negotiating text nor those in the compromise suggestions by the Chairman of Negotiating Group 4 were satisfactory or equitable.

15. The resources of the exclusive economic zone should be shared among mankind as a whole and, in any case, any decisions regarding their distribution should be made by an international organization rather than unilaterally by a coastal State. Consequently, a surplus of the allowable catch was an unfair concept which departed inequitably from existing international law.

16. Article 69 in the compromise suggestions could be improved by replacing the words "appropriate part" in paragraph 1 by the words "substantial part". The reference in paragraph 2 of that article to States which were participating or were entitled to participate in the catch was most unfair to newly independent States which, for historical reasons, had been unable so to participate.

17. He submitted that the compromise suggestions by the Chairman of Negotiating Group 4 did not command sufficiently widespread support for inclusion in the revised negotiating text.

18. Mr. GLIGA (Romania) observed that the compromise suggestions made by the Chairman of Negotiating Group 4 contained an amendment to article 62, paragraph 2. At the previous session, his own delegation, together with that of Yugoslavia, had submitted an informal proposal to amend that article, with the aim of giving priority to the interests of all developing countries. That proposal had not been taken into consideration, and the suggestion made by the Chairman of Negotiating Group 4 had made the text even more unacceptable. For that reason, Romania and Yugoslavia had again submitted a proposal (C.2/Informal Meeting/41) which was designed to avoid discrimination among developing countries and to place all of them on an equal footing with regard to access to the living resources of the sea. The principle of priority for the developing countries, including priority in matters relating to the law of the sea, was generally accepted by the international community. The informal proposal by Romania and Yugoslavia took account of the compromise suggestion made by the Chairman of Negotiating Group 4, since the references to articles 69 and 70 were maintained. The coastal State, in determining its capacity to harvest the living resources of the exclusive economic zone, was to take special account of the interests of the land-locked States and geographically disadvantaged States and, more particularly, of the interests of the developing countries among that group of States. In the French and Russian versions of the informal proposal, the phrase "developing States in particular" should be underlined as it was in the other language versions.

19. With regard to article 70, although the text suggested by the Chairman of Negotiating Group 4 represented progress towards a compromise, his delegation was none the less convinced that it was necessary to find a solution satisfactory to all countries. More especially, it was essential to avoid impairing the interests of geographically disadvantaged developing countries situated in regions with limited fishing resources—countries which had invested in fishing fleets and would, as things stood, be excluded from the economic zones, whereas highly developed countries would acquire considerable advantages with regard to fishing. It was precisely those countries—i.e., coastal States with large ocean areas—that were invoking acquired rights in the matter of the continental shelf; but rights acquired by other countries, particularly developing countries, were no longer taken into account in discussions on the question of access to living resources. The same legal rules and reasoning must obviously be applied in respect of all countries.

20. He was therefore convinced of the need to find a solution that was equally satisfactory for countries in regions without fishing resources, and particularly for developing countries. In any event, the meaning of the term "region" should be sufficiently wide to cover the interests of all States. His delegation was ready to make every effort to arrive at a generally acceptable text on the subject of access by all countries to the living resources of the sea.

21. Mr. PERIŠIĆ (Yugoslavia) said that his delegation was ready to support any compromise suggestion that would command the support of the majority of States. The mandate of Negotiating Group 4 referred to the right of access of land-locked States and certain developing coastal States in a sub-region or region to the living resources of the exclusive economic zone, or the right of access of land-locked and geographically disadvantaged States to the living resources of the exclusive economic zone. Consequently, his own delegation and that of Romania considered that their informal proposal was fully consistent with that mandate. It was not a proposal for a direct amendment to article 62, paragraph 2, but a proposal to amend the suggestion by the Chairman of Negotiating Group 4.

22. His delegation held the view that, in keeping with the general philosophy of development of the United Nations Conference on Trade and Development, no discrimination should be exercised among developing States. The developing countries were all members of the Group of 77 and it was entirely unacceptable that discrimination should be practised among them from the outset. Nevertheless, his country also felt that special account should be taken of the interests of land-locked States and States with special geographical characteristics—in other words, the States referred to in articles 69 and 70.

23. Mr. AL-MOR (United Arab Emirates) said that the concept underlying the report of the Chairman of Negotiating Group 4 was unsatisfactory. Unfortunately, the Group had held only one meeting during the session. The Arab Gulf States—namely, Iraq, Bahrain, Kuwait, Qatar and the United Arab Emirates—had adopted a unified position in view of their special geographical situation, which called for a change in the text proposed by the Chairman of Negotiating Group 4. They had not wished to raise the matter within the Group itself and had preferred to consult the Chairman. Accordingly, they had submitted to him a reasonable and balanced proposal that would be acceptable to coastal States. However, the ocean States, which appeared to be trying to direct the affairs of the Conference in an arbitrary manner, had rejected all proposals and had informed the Chairman of the Group that the proposal by the Arab Gulf States was unacceptable.

24. That proposal was not only reasonable but even inevitable, since it was inconceivable that the interests of some countries should not be taken into consideration. Consequently, the Arab Gulf States had hoped that, in his report, the Chairman of the Group would take account of the proposal in question and thus furnish proof that the Conference was indeed paying attention to the legitimate interests of countries. The aim should be to arrive at a text which commanded wide support and offered the prospects of a consensus. In the opinion

[5] A/AC.138/87.

of his delegation, the suggestions made by the Chairman could not open the way to a genuine consensus.

25. The CHAIRMAN suggested that the Committee should defer further consideration of the report of the Chairman of Negotiating Group 4, and should now hear the report of the Chairman of Negotiating Group 7, who was obliged to leave Geneva shortly.

It was so agreed.

26. Mr. MANNER (Finland), Chairman of Negotiating Group 7, said that the Group had been established, in accordance with the decisions taken at the 90th plenary meeting, on 13 April 1978, and appearing in document A/CONF.62/62, to deal with the hard-core issue of delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon. Accordingly, the Group had considered articles 15, 74, 83 and 297, paragraph 1 (*a*). In its work, the Group had had to take into account the fact that for the possible modification or revision of the negotiating text the only solutions that could be suggested, as a result of the Group's deliberations, were those which could be found to offer a substantially improved prospect of a consensus. During the seventh and eighth sessions of the Conference, the Group had held a total of 41 meetings, with 39 working documents being distributed in the course of its discussions. As stated in his report of 17 May 1978 (NG7/21), there seemed to be widespread support for the retention of the present formulation of article 15, with two drafting amendments. Accordingly, the text would read as follows:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

27. From the outset, the negotiations on paragraph 1 of article 74 and of article 83 had been characterized by the opposing positions of delegations supporting the equidistance rule and those specifically emphasizing delimitation in accordance with equitable principles.

28. At the end of the seventh session he had stated (NG7/24)[6] that, during the discussions, general understanding had seemed to emerge to the effect that, in broad terms, the final solution could contain four elements: a reference to the effect that any measure of delimitation should be effected by agreement, a reference to the effect that all relevant or special circumstances were to be taken into account in the process of delimitation, a reference, in some form, to equity or equitable principles, and a reference, in some form, to the median or equidistance line.

29. That scheme had also been referred to in his statement at the beginning of the current session (NG7/26), when he had expressed the view that the necessary compromise might be within reach if the Group could agree upon a neutral formula avoiding any classification or hierarchy of the elements concerned. During the current session, a number of compromise proposals had been made, more particularly by the delegations of Mexico and Peru. At least one of them, that contained in document NG7/36, had received a fair amount of interest as a possible basis for further negotiations. However, the proposal, as well as a revised version thereof (NG/7/36/Rev.1), had later been withdrawn by its sponsors.

[6] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 170.

30. Despite intensive negotiations, the Group had not succeeded in reaching agreement on any of the texts before it. The reasons why the various compromise efforts made during the Group's work had not succeeded had been clearly voiced by different delegations. He would not, of course, criticize those reasons, which were very important to the respective delegations, but he doubted whether, in view of the Group's lengthy deliberations and the controversies still prevailing, the Conference would ever be in a position to produce a provision that would offer a precise and definite answer to the question of delimitation criteria.

31. In the light of the various suggestions presented and assuming that, in one form or another, negotiations on the issue of delimitation were to be continued at the next stage of the Conference, he wished, as a possible basis for a compromise, to suggest the following text:

"The delimitation of the exclusive economic zone (or of the continental shelf) between States with opposite or adjacent coasts shall be effected by agreement between the parties concerned, taking into account all relevant criteria and special circumstances in order to arrive at a solution in accordance with equitable principles, applying the equidistance rule or such other means as are appropriate in each specific case."

32. As pointed out in his statement at the beginning of the session, with regard to paragraph 3 of article 74 and of article 83, the question of a rule on interim measures to be applied pending final delimitation had been approached from different angles. Some delegations had not considered such a provision necessary at all. Others had advocated inclusion of provisions obliging or encouraging parties having a delimitation problem, to agree on provisional arrangements pending final delimitation. A number of delegations had also found it necessary to suggest prohibitive rules against arbitrary exploitation of natural resources or other unilateral measures within the disputed area.

33. In addition to earlier proposals, several new formulations had been introduced at the current session. In that regard, the main interest had been accorded to the proposal by India, Iraq and Morocco (NG7/32), as well as the proposal by the Chair (NG7/38) presented after consultations in a private group composed of those three delegations and the delegations of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic.

34. Although those proposals had seemed to signify a step forward in the search for a compromise, they had not gained such widespread and substantial support as would justify a revision of the negotiating text. In view of the comments made, it seemed that the most serious difficulty relating to those proposals concerned the prohibitive references therein to activities or measures potentially to be taken during the transitional period. A number of delegations had criticized the proposals for introducing what they had felt to be a moratorium arguably prohibiting any economic activities in the disputed area.

35. In order to facilitate further discussions on the paragraph in question, he proposed the following text, based upon his previous compromise suggestion:

"Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort with a view to entering into provisional arrangements. Accordingly, during this transitional period, they shall refrain from aggravating the situation or hampering in any way the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

36. With regard to article 74, paragraph 4, it seemed that, as stated in his report of 17 May 1978, the placing in the convention of the definition of the median or equidistance line, if such

a definition were deemed to be necessary, could be left for consideration in the Drafting Committee.

37. With regard to article 74, paragraph 5, and potentially article 83, paragraph 4, as well, a proposal had been made that the word "all" should be added before the word "questions", but no conclusion had been reached on that point.

38. The discussions on the settlement of maritime boundary disputes had been characterized by opposing arguments on the nature of settlement procedures.

39. During the seventh session, a paper (NG7/20) containing a set of alternative approaches relating to article 297, paragraph 1(*a*), had been issued as a result of discussions held within an expert group led by Mr. L. B. Sohn (United States of America). The paper had subsequently been revised by Mr. Sohn (NG7/20/Rev.1) who had later presented an extensive survey (NG7/27) of various combinations of the main elements potentially to be taken into account in the consideration of the settlement of delimitation disputes. In order to narrow the ground for reaching the final compromise, Mr. Sohn had further presented a paper (NG7/37) containing four alternative basic choices for treatment of maritime boundary disputes. The tireless efforts of Mr. Sohn had contributed greatly to the work of the Group.

40. Despite lengthy discussions, the Group had not been able to solve that issue, which therefore remained open. At the beginning of the session he had expressed the view that there did not seem to be much prospect of finding the sought-after compromise on the basis of a rule which, in one form or another, would provide for the acceptance of a compulsory procedure entailing a binding decision. The discussions held during the current session had left him with the impression that no change had taken place in that regard. Although it was abundantly clear that several delegations still remained determined to advocate compulsory and binding procedures, it seemed equally clear that a consensus based on such a solution might not materialize.

41. As an alternative which perhaps could, in future consideration, prove conducive to the final compromise, he wished to offer the following formulation for article 297, paragraph 1(*a*), borrowing elements in particular from Mr. Sohn's papers, the proposal made by Israel contained in document NG7/30, and the proposal made by Bulgaria contained in document NG7/5:

> "Disputes concerning sea boundary delimitations between States with opposite or adjacent coasts, or those involving historic bays or titles, provided that the State having made such a declaration shall, when thereafter such dispute arises and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the dispute to the conciliation procedure provided for in annex IV, and provided further that such procedure shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory.
>
> "After the Conciliation Commission has presented its report, the parties shall negotiate an agreement on the basis of that report. If these negotiations do not result in an agreement within a period of . . . from the date of the Commission's report, the parties to the dispute shall, by mutual consent, submit the question to the procedures provided for in part XV, section 2, unless the parties otherwise agree."

42. On submitting that suggestion, he was well aware that it did not fully correspond to the established positions of many delegations, including those which had considered that the conciliation procedure should only relate to basic questions outstanding between the parties with respect to the specific circumstances, principles or methods which were to be considered by the parties concerned in resolving the issue in dispute. In his understanding, however, the suggestion might reflect a realistic view of the actual situation.

43. In that connexion it should also be pointed out that proposals had been made for the modification of the introduction to article 297 and for the deletion of article 74, paragraph 2, with possible deletion of the corresponding paragraph of article 83 as well. No conclusions had been reached on those points.

44. It was to be concluded that, except for the two drafting amendments to article 15, none of the proposals made during the work of the Group for the modification or revision of the negotiating text had secured a consensus within the Group or seemed to offer a substantially improved prospect of a consensus in the plenary meeting. Accordingly, apart from the changes to article 15, he was not in a position to suggest any modification or revision of the text to be made on the basis of the work of Negotiating Group 7.

45. On the other hand, and without prejudice to the organizational pattern of future work, it was his understanding that there was a general feeling in the Group that negotiations on the issues still pending solution should be continued. That feeling was strengthened by the positive attitude of several delegations, particularly during the final stage of the negotiations. In that connexion, it might also be recalled that it had been repeatedly pointed out by many delegations that the issues concerned were closely interrelated and should be considered together as elements of a "package" in the future.

46. Last but not least, he wished to express his thanks to the members of the secretariat for all their valuable help and assistance during the past year.

47. The CHAIRMAN said that, on behalf of the Committee, he wished to congratulate the Chairman of Negotiating Group 7 for the work undertaken on difficult and controversial issues and also to thank Mr. Sohn for his co-operation in the work of the Group.

48. Mr. ZEGERS (Chile) said that the progress made in the difficult task of Negotiating Group 7 was not sufficient to lead to a revision of the negotiating text, but it might well do so at the next stage of the Conference. He welcomed the consensus on the territorial sea, as formulated in article 15, and also that reached on the four elements for a substantive rule on the delimitation of the economic zone and the continental shelf. It was also encouraging to learn that a consensus appeared to be emerging with regard to a neutral formula leading to a compromise between those who advocated the equidistance line and those who advocated equitable principles. The formulation suggested by the Chairman of the Group reflected the discussions within the Group, called for close attention and, so far as his own delegation was concerned, constituted a worthwhile basis for negotiation.

49. The negotiating text envisaged a compulsory system of settlement of disputes that had commanded the support of an ample majority which had also expressed its views in the Negotiating Group. Admittedly a fairly large minority had voiced objections to such a system and Mr. Sohn had suggested alternative solutions. The Chairman of the Group, however, was now suggesting a system of compulsory conciliation which would deal only with future disputes. Moreover, the compulsory nature of the conciliation was relative, because it was stated that the parties would be allowed "a reasonable period of time" to reach agreement and no specific time-limit for reaching agreement was fixed. Again, the system did not cover disputes pertaining to territories or islands. The text proposed by the Chairman of the Group was not consistent with the opinion of the majority of the Conference or of the majority of the members of the Group itself; nor was it in keeping with three of the four formulations proposed by Mr. Sohn. The Chairman of the Group, doubtless with the best of

intentions, had exceeded his terms of reference and had failed to reflect the trends of opinion in the Conference. Consequently, his delegation regretted the inclusion in the report of the Chairman of the Group of the text relating to article 297, paragraph 1 (*a*), and considered that it should be regarded as non-existent for the purposes of future negotiations. He none the less wished to express his appreciation of the work undertaken by the Chairman and of the report as a whole.

50. Mr. ROSENNE (Israel) said that, in the opinion of his delegation, the question of the settlement of disputes should not be allowed to complicate the already difficult matter of delimitation, and that the terms of reference of Negotiating Group 7 should be suitably modified. His delegation saw no inherent difference between disputes over land frontiers and disputes over maritime boundaries. The disputes were about the spaces over which sovereignty or sovereign rights could be exercised. The International Court of Justice had recently stated in the Aegean Sea Continental Shelf Case[7] that maritime boundaries were excluded from the doctrine of *rebus sic stantibus* just as much as were land boundaries. His delegation had the strongest reservations about that statement, but it had to be taken into account since it was now established jurisprudence.

51. His delegation had suggested that the rule in articles 74 and 83 would be better if couched in the language of a residual rule which would come into operation in the absence of agreement, and it had proposed a text for such a residual rule (NG7/28). In the course of the discussions, it had withdrawn that proposal in favour of the proposal in document NG7/36 (but not in favour of the proposal in document NG7/36/Rev. 1); but it now formally requested that the text of the proposed residual rule should be reproduced as a foot-note in the summary record of the meeting or otherwise included in the records of the Conference.[8] It could accept the Chairman's suggestions regarding paragraph 1 of article 74 and of article 83 as a possible basis for compromise, subject to some adjustments in the order in which the elements were placed, but would reinstate its draft residual rule as an alternative basis for a compromise. It agreed that the rule should always encourage delimitation by agreement but did not think it necessarily followed that, in the absence of agreement, a dispute arose to which part XV of the convention would be applicable. For that reason, paragraph 2 of the two articles seemed incorrect and unacceptable. There was no need for any interim rule which might well do more harm than good.

52. His delegation agreed with the Chairman that the placing of the definition of the median and equidistance line could be left to the Drafting Committee, which would also keep in mind that the term was at present also defined in article 15.

53. It would be advisable to include the word "all" before the word "questions" in articles 74, paragraph 5, and 83, paragraph 4. All the terms of delimitation agreements between two or more States, including their provisions regarding the settlement of disputes, should be given absolute priority over the convention and the insertion of the word "all" would remove all doubts on that score.

54. His delegation could not accept article 297, paragraph (1) (*a*), in the form in which it was drafted. It would be prepared to consider some form of compulsory recourse to non-binding conciliation for future disputes only and had submitted a concrete suggestion in document NG7/30, to which the Chairman of Negotiating Group 7 had referred in his report; but the Chairman's own proposal did not make it sufficiently clear that it related only to disputes arising after the entry into force of the convention between the parties to the dispute. In the view of his delegation, that limitation must be clearly enunciated.

55. In conclusion, he said that the introduction to article 297 should be brought into line with the new introduction to article 296.

56. Mr. LACLETA (Spain), speaking as the co-ordinator of the group of countries which had sponsored document NG7/2, said that those countries ageed with the conclusion of the Chairman of Negotiating Group 7 that none of the proposals made during the work of the Group for the modification or revision of the negotiating text had secured a consensus within the Group. They also agreed that there was a general feeling in the Group that negotiations on the issues still pending solution should be continued. It should be noted that the three issues still awaiting solution, namely, delimitation criteria, interim measures and the settlement of disputes, were closely interrelated.

57. In his comments on the discussions on delimitation criteria, the Chairman had singled out the proposal put forward by the delegations of Mexico and Peru (NG7/36) as one in which much interest had been expressed. In that connexion, he wished to draw attention to the fact that the sponsors of document NG7/2 had been unable to support the proposal in document NG7/36. They were, however, prepared to consider carefully the new text on the question proposed by the Chairman.

58. The paragraphs of the Chairman's report devoted to the question of interim measures did not fully reflect all aspects of the discussion on the question. The sponsors of document NG7/2 had proposed a system whereby a delimitation line could be established. The proposal put forward by the delegations of India, Iraq and Morocco (NG7/32) differed radically from that in document NG7/2, and acceptance of it would imply a fundamental change in the structure of the delimitation mechanism described in document NG7/2. Nevertheless, the substance of the formulation proposed by the Chairman merited attention. It must be borne in mind, however, that the question of interim measures could not be separated from the questions of delimitation criteria and the settlement of disputes.

59. The Chairman's report did not accurately reflect the discussions of the Group on the question of settlement of disputes. The great majority of States still advocated compulsory and binding procedures. It was not correct, therefore, to state merely that several delegations advocated such procedures. The formulation suggested in the report as a compromise was absolutely unilateral.

60. In conclusion, he said that the sponsors of document NG7/2 considered that the Negotiating Group should continue its endeavours to find solutions to the problems before it. They agreed with the conclusions reached by the Chairman of the Group in his report.

[7] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports, 1978*, p. 3.

[8] The informal working paper submitted by Israel (NG7/28) reads as follows:

"Article 74

"Title: reserved

"1. Failing agreement between the parties to the contrary,

or

In the absence of agreement,

or

Unless otherwise agreed,

the delimitation of the exclusive economic zone between States whose coasts are opposite or adjacent to each other shall be based on equitable principles taking into account the median or equidistance line and all other special circumstances.

"2. Where there is an agreement in force between the States concerned, all questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement (see NG7/10 and Add. 1, para. 4).

"3. Omit article 74, paragraphs 2 and 3, of the informal composite negotiating text.

"4. This proposal does not necessarily relate to article 83, but could be extended to it if that is the general desire."

61. Mr. SONG (Republic of Korea) said that Negotiating Group 7 must continue its efforts to find solutions to the difficult problems that had been referred to it by the Conference.

62. His delegation felt that the proposal by the Chairman of the Group on delimitation might not be acceptable to the Group; it hoped, therefore, that that proposal would be improved so as better to reflect the position of the Group.

63. In conclusion, he said that his delegation supported the Chairman's report.

64. Mr. POP (Romania) said that his delegation could not agree with the Chairman's proposal that the equidistance line should be regarded as a rule of law with privileged status. It was convinced that a basis for a compromise text could be found in articles 74 and 83, in document NG7/10 and Add. 1 and probably in the first proposal of the delegations of Mexico and Peru (NG7/36), as amended on a proposal made by the delegation of the USSR.

65. The Chairman's suggestion concerning interim measures might be satisfactory; his delegation would examine that suggestion in a spirit of compromise.

66. Mr. CASTAÑEDA (Mexico) said that, in general, his delegation could support the Chairman's report and the conclusions he had reached.

67. Mr. YOLGA (Turkey) expressed the hope that, at the next stage of the Conference, more time would be available for discussion of the important questions of the régime of islands and semi-enclosed seas.

68. Observing that the representative of Chile had expressed satisfaction at the inclusion in the report of a reference to a neutral formula for the criteria governing delimitation, he said that his delegation and the group of 29 were firmly opposed to such a formula.

69. In the opinion of his delegation, the wording of paragraph 1 of articles 74 and 83 should be examined in much greater depth.

70. His delegation fully agreed with the opinions expressed by the representative of Israel on article 297, paragraph 1.

71. Mr. CLINGAN (United States of America) said that his delegation agreed with the Chairman's conclusion that there had been no consensus on any changes other than the drafting amendments to article 15. In its view, therefore, it would not be possible to hope for a revision of the negotiating text on any of the remaining points under discussion.

72. The Chairman had also made three draft proposals of his own, which he had characterized as containing elements conducive to a compromise. Having listened attentively to all the debates in the Group, his delegation was not able to agree that those, or any other proposals that had been placed before the Group, offered any reasonable hope of achieving a consensus at the time. It considered, therefore, that it was premature to attempt to predict where any final outcome might lie. Much work remained to be done before such an effort might prove productive. For that reason, his delegation concluded that it could not accept the texts set forth in the Chairman's report as a basis for a compromise.

73. Mr. SAMPER (Colombia) said that, despite his endeavours, the Chairman of Negotiating Group 7 had not succeeded in producing a balanced report. The three questions dealt with in the report—delimitation criteria, interim measures and the settlement of disputes—constituted a package deal. There was a link between the three issues which could not be broken. His delegation shared the opinions expressed by the representatives of Spain and Chile on the question of delimitation criteria; it considered, nevertheless, that the text proposed by the Chairman represented a step towards consensus.

74. The compromise text on interim measures suggested by the Chairman represented no improvement on the negotiating text.

75. Turning to the question of the settlement of disputes, he said that article 297 could not be changed except by consensus. The discussions on that article had not been accurately reflected in the report. There was an obvious difference between the Chairman's conclusions on delimitation criteria and interim measures and his conclusions on the settlement of disputes. His delegation agreed with the Chairman's statement that he was not in a position to suggest any modification or revision of the negotiating text on the basis of the work of Negotiating Group 7. It also agreed that negotiations on the issues still pending should be continued.

76. Mr. SYMONIDES (Poland) said that, on the understanding that the Committee's task was to evaluate the results achieved in the negotiating groups rather than to continue the debate, his delegation could support the conclusion of the Chairman of Negotiating Group 7 that none of the proposals concerning paragraphs 1, 2 and 3 of articles 74 and 83 could be included in the revised negotiating text. It agreed that certain proposals, particularly that submitted by the delegations of Mexico and Peru (NG7/36), as amended by the USSR, and that put forward by the delegations of India, Iraq and Morocco (NG7/32), had received such a degree of support that they could be regarded as possible bases for further negotiations.

77. His delegation was firmly convinced that negotiations on delimitation should be continued during the second part of the session. The suggestion made by the Chairman on that matter might prove most helpful.

78. Mr. HAYES (Ireland), speaking as co-ordinator of the sponsors of document NG7/10 and Add. 1, endorsed the comments made by the representative of Romania on paragraph 1 of article 74 and of article 83.

79. He agreed with the representative of Turkey that no consensus had been reached in Negotiating Group 7 on the Chairman's suggestion for a neutral formula: the sponsors of document NG/10 and Add. 1 rejected that suggestion.

80. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the Chairman's proposals on delimitation, interim measures and the settlement of disputes could constitute a satisfactory basis for a compromise solution on those issues. He stressed that the majority of the members of the Group had endeavoured to find solutions acceptable to all delegations. Looked at from that point of view, the report under discussion was a valuable contribution to the success of the Conference.

The meeting rose at 1.15 p.m.

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
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58th meeting of the Second Committee

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Eighth Session)*

58th meeting

Tuesday, 24 April 1979, at 3.25 p.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Consideration of the reports of the Chairmen of Negotiating Groups 7, 4 and 6

1. Mr. MAWHINNEY (Canada) said that it was clear from the discussion that the legal criteria for the delimitation of the exclusive economic zone and the continental shelf, as set out in paragraph 1 of article 74 and of article 83 of the informal composite negotiating text,[1] did not yet command unanimous support. The informal text submitted in the report of the Chairman of Negotiating Group 7 at the previous meeting could serve as a basis for future efforts to reach a compromise, taking into account the other proposals that had been made, including the Mexican proposal (NG7/29 and Rev.1). With regard to the settlement of disputes, his delegation shared the concerns expressed by the delegations of Colombia and Chile regarding the multiplicity of possible procedures. With regard to article 297, concerning optional exceptions to the settlement procedures provided for in the convention, any alteration must be linked to articles 74 and 83, since such exceptions were closely related to the delimitation of the exclusive economic zone and the continental shelf. For its part, his delegation thought that any departure from objective delimitation criteria must be accompanied by correspondingly effective procedures for the settlement of disputes.

2. Mr. DARWIN (United Kingdom) said that, in his delegation's view, the median line criterion was an essential element in any text which was to command a consensus. The new proposal by the Chairman of Negotiating Group 7 regarding paragraph 1 of article 74 and of article 83 merited further careful study before the debate on those articles was concluded.

3. With regard to interim arrangements, the text submitted by the Chairman required further study. Any provision on that subject must be worded very carefully since, in some circumstances, it could be very unjust to certain States by preventing them from exploiting the sea-bed. With regard to the settlement of disputes, his delegation favoured binding procedures, but thought that the question should be given very careful consideration. While recognizing that the Chairman of the Group had presented an accurate over-all review of the situation, his delegation had grave objections on a number of points in the Chairman's report.

4. Mr. ARIAS SCHREIBER (Peru) said that the text of the future convention should be well balanced enough not to prejudice the interests of either of the two groups of delegations concerned, and to enable any country to invoke the appropriate criteria in each specific case. That was precisely the merit of the formulation submitted by the Chairman of Negotiating Group 7 on the substantive provisions of articles 74 and 83 concerning the exclusive economic zone and the continental shelf. With regard to the settlement of disputes, his delegation, like those of Chile and other countries, felt that there was a majority in favour of the use of compulsory procedures; in that regard, the proposal submitted by the Chairman was incomplete.

5. Mr. ATAÍDE (Portugal) said that his delegation subscribed to all the observations made by the representative of Spain as co-ordinator of the group of sponsors of the informal proposals on articles 74 and 83 (NG7/2). The median line principle had gained ground during the current session, but that circumstance was not reflected in the report of the Chairman of Negotiating Group 7 (NG7/39).

6. Mr. DJALAL (Indonesia) said that, in his delegation's view, the existence of a historic title or of other special circumstances could be established only by agreement between opposite or adjacent States, and not unilaterally, and that article 15 should be so understood. With regard to paragraph 1 of article 74 and of article 83, he thought that the compromise proposed by the Chairman of the Group was an appreciable improvement on the negotiating text. With regard to paragraph 3, on interim measures, he was afraid that the expression "they shall refrain from aggravating the situation" in the text suggested by the Chairman might be interpreted subjectively and might in fact be understood as imposing a moratorium. With regard to the remainder of the paragraph, the proposed new text seemed to be an improvement on the preceding one. On the subject of paragraph 4, he said that a definition of the median line or the equidistance line must at all costs be included in the convention and must apply both to the exclusive economic zone and to the continental shelf, regardless of the article in which it appeared. The limit of the exclusive economic zone did not always coincide with that of the continental shelf, and the two concepts should be made clear, if necessary in a new article.

7. Mr. XU Guangjian (China) agreed with the Chairman that it was not at present possible to revise the informal composite negotiating text. In articles 74 and 83, the Chairman's text on the delimitation of maritime boundaries needed some improvement. The existing wording of the informal composite negotiating text and the informal proposal of the delegations of Mexico and Peru (NG7/36 and Rev.1) could serve as a point of departure for future negotiations. With regard to interim measures, his delegation was largely in agreement with the report of the Chairman. The question of the settlement of disputes was very complex and his delegation would like to study the Chairman's report in greater detail before expressing a view.

8. Mr. FIGUEREDO PLANCHART (Venezuela) said that, in general, he agreed with the report of the Chairman of the Group. However, in view of the observations made at the preceding meeting to the effect that a minority of the participants in the Conference was opposed to binding procedures for the settlement of disputes, he wished to reaffirm formally that his delegation could not accept a compromise which would entail acceptance by the parties of a procedure which would impose a binding decision on them.

9. Mr. PARAISO (France) said that, with regard to the basic criteria for delimitation, he was largely in agreement with the Chairman's report, but he could not subscribe to the idea of a so-called neutral formula. The guiding principles of delimitation should not be placed on the same footing as methods of delimitation such as the equidistance method. On the other hand, the most recent suggestions by the Chairman, including those relating to articles 74 and 83, and the compromise wording proposed for paragraph 3 of each of those articles by a private group (NG7/38) could, with certain improvements, be useful for subsequent discussions. With regard to the settlement of disputes, his delegation reserved the right to express its views in another forum.

10. Mr. ZHELYAZKOV (Bulgaria) said that, in general, he approved the report of the Chairman of Negotiating Group 7, in particular the new proposals for paragraphs 1 and 3 of article

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

74 and of article 83, and also the proposal for article 297, paragraph 1 (*a*), concerning the settlement of disputes.

11. Mr. STAVROPOULOS (Greece) said that he agreed with the Chairman except on three points. With regard to delimitation criteria, the text relating to the equidistance line was not altogether satisfactory; but his delegation agreed that it was necessary to find a genuinely neutral solution which did not favour any State at the expense of another. With regard to paragraph 3 of article 74 and of article 83, he said that the proposed new text, although not entirely satisfactory, nevertheless constituted a definite improvement on the informal composite negotiating text. With regard to article 297, paragraph 1 (*a*), concerning the settlement of disputes, the Chairman's report did not make it clear that there had been a clear majority in the discussion in favour of compulsory third-party adjudication.

12. Mr. NOMURA (Japan) said that he did not agree with delegations which took the view that the proposals in documents NG7/32 and 38 concerning paragraph 3 of article 74 and of article 83 could serve as a basis for a compromise. In particular, he had reservations regarding the second sentence of the text proposed by the Chairman, especially since a number of delegations had criticized provisions which would amount to imposing a kind of moratorium.

13. Mr. VELLA (Malta) said that, as the representative of Spain had pointed out when speaking on behalf of the sponsors of the informal proposals in document NG7/2, delimitation criteria, interim measures and settlement of disputes were closely linked. With regard to delimitation criteria, the Chairman's text could provide a basis for agreement. The situation was different in the case of the settlement of disputes, since the discussion had shown that there was a majority in favour of compulsory settlement procedures, a fact which was not made clear in the report.

14. Mr. MAHMOOD (Pakistan) agreed with the Chairman that, except for the two amendments to article 15, there was no consensus, or any prospect of one, for a revision of the negotiating text. Indeed, the part relating to the delimitation of maritime boundaries between adjacent and opposite States was well formulated. With regard to delimitation criteria, the proposed new text could serve as a basis for future negotiations if it were amended in accordance with the suggestions made by the Romanian delegation at the preceding meeting, with the proposals submitted in the initial version of document NG7/36 and with the Soviet proposals. With regard to interim measures, his delegation could not agree with the Chairman, in view of the number of delegations that had advocated a compulsory procedure for the settlement of disputes; in that regard his delegation shared the views expressed by the delegations of Chile and Malta.

15. The CHAIRMAN said it was clear that the Committee as a whole agreed with the Chairman of Negotiating Group 7 that there was as yet no basis for a consensus on the questions before the Group.

16. He declared that consideration of the report of Negotiating Group 7 on the delimitation of maritime boundaries between adjacent and opposite States and the settlement of disputes thereon was concluded.

17. Mr. HAFNER (Austria) said that his delegation had some reservations with regard to article 69, paragraph 3, concerning the rights of land-locked States, since that paragraph would tend to restrict such rights solely to developing countries.

18. Mr. ARIAS SCHREIBER (Peru) said that the wording proposed in document NG4/9/Rev.2[2] by the Chairman of Negotiating Group 4 was preferable to the negotiating text, although it contained elements which were unacceptable to many coastal States, particularly with regard to the rights claimed by non-coastal States to exploit the exclusive economic zone of coastal States. Without wishing to re-open a lengthy debate on a question on which he had already expressed his views on many occasions, he wished to point out that, if certain delegations insisted on their extreme position, other delegations would be compelled to revert to their initial position, in particular with respect to the 200-mile limit for the territorial sea. His delegation could agree that the text proposed by the Chairman of the Group should be incorporated in the negotiating text in spite of the objections it had to that wording—objections which it intended in due course to embody in formal proposals. If other delegations were opposed to the Chairman's wording, his delegation would have no objection to the retention of the existing wording of the negotiating text.

19. The amendment proposed by the Romanian and the Yugoslav delegations to article 62, paragraph 2 (C.2/Informal Meeting/41), seemed acceptable in the light of the explanations provided by those two delegations in support of their proposal.

20. Mr. JAYAKUMAR (Singapore) said that his delegation had several reservations regarding the text submitted by the Chairman, for reasons he had explained earlier. However, it must be admitted that, all things considered, the Chairman's report offered better prospects for a consensus than did the negotiating text. His delegation supported the principle underlying the proposal by the Yugoslav and Romanian delegations, but had some reservations regarding its interpretation. Under the Chairman's proposed amendment to article 62, paragraph 2, coastal States would be requested to have regard to the provisions of articles 69 and 70, especially in relation to developing countries. He wondered if the proposal of the Yugoslav and Romanian delegations would have the effect of relegating that provision to a secondary place. If so, his delegation would have difficulties in accepting it. If, on the other hand, the question was simply a drafting matter, he hoped that the Yugoslav and Romanian delegations would bear his views in mind in any future redrafting of their proposal.

21. Mr. KE ZAISHUO (China) said that the compromise text of Negotiating Group 4 constituted an appreciable improvement on the negotiating text and should be incorporated in it. That did not mean, however, that the compromise text could not subsequently be revised and further improved with a view to gaining wider support. His delegation was favourably disposed to the proposal made by Romania and Yugoslavia, which merited more detailed consideration.

22. Mr. AL-NIMER (Bahrain) paid a tribute to the efforts made by Mr. Nandan to take account of the positions of the various delegations represented in Negotiating Group 4, and those of other countries. The compromise text was the result of negotiations which had lasted longer than those leading to the elaboration of the negotiating text and could therefore constitute a basis for further negotiations. It was necessary to overcome the obstacle resulting from the refusal of certain coastal countries to accept any amendment of the text, in order to safeguard their interests in areas not under their jurisdiction. He pointed out, moreover, that his delegation had proposed a definition of land-locked or geographically disadvantaged countries which took account of article 70. With regard to the problems raised by the question of fishing rights and the surplus catch, his delegation supported the proposal made in that connexion by Iraq and the United Arab Emirates.

23. Mr. VALENCIA RODRÍGUEZ (Ecuador) said that the Chairman's proposals were an improvement on the existing wording of the negotiating text, but were not entirely satisfactory for a number of reasons. First, with regard to paragraph 1 of article 69 and of article 70, he was concerned at the use of the word "right" in connexion with the participation of land-

[2] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 93.

locked and geographically disadvantaged States in the exploitation of the resources of the exclusive economic zone of coastal States. Secondly, the words "region" and "subregion" in the same paragraph should be clearly defined on the basis of appropriate geographical or economic criteria. Thirdly, the definition of "States with special geographical characteristics" in article 70, paragraph 2, was not satisfactory. That concept should be clarified. In article 69, paragraph 3, and article 70, paragraph 4, co-operation between coastal and land-locked or geographically disadvantaged States should not be compulsory, as the proposed text seemed to suggest; the matter should be left to the sovereign decision of the parties concerned.

24. For all those reasons, the new proposed text did not offer improved prospects of a consensus. The proposal by Yugoslavia and Romania, on the other hand, would be useful.

25. Mr. HAMOUD (Iraq) said that Mr. Nandan's excellent report constituted an improvement on the negotiating text and opened the way for further negotiations and a consensus, although some aspects of it needed clarification.

26. Mr. CHOI HO IK (Democratic People's Republic of Korea) said that the proposal by the delegations of Romania and Yugoslavia concerning article 62, paragraph 2, took account both of the economic situation and of the interests of developing countries. The Democratic People's Republic of Korea, as an independent and peace-loving developing country, supported that proposal.

27. Mr. CASTAÑEDA (Mexico) wished to state once again that the coastal States did not consider it desirable to continue negotiations in the Negotiating Group since, under existing conditions, consideration of the question could not lead to positive results. The text proposed by Mr. Nandan represented the best possible balance that could be achieved between the different views. Certain coastal States had genuine objections to the Chairman's text, as the delegations of Peru and Ecuador had pointed out, but the extent to which they were willing to accept it varied from one delegation to another. He was not therefore in a position to reply on behalf of the coastal States to the question whether, as a group, they considered it desirable to revise the negotiating text accordingly.

28. For its part, the Mexican delegation believed that the text proposed by Mr. Nandan represented a significant improvement on the negotiating text and improved the chances of reaching a consensus. Consequently, the text should be incorporated in the negotiating text.

29. Mr. GOERNER (German Democratic Republic) paid a tribute to the efforts of Mr. Nandan, but felt that document NG4/9/Rev.2 satisfied only to a very limited extent the expectations of the German Democratic Republic with respect to the right of access by land-locked and geographically disadvantaged countries to the living resources of the economic zones of other States. It did not in any way compensate for the losses suffered by fishermen of the German Democratic Republic as a result of the establishment of economic zones in what had been their traditional fishing grounds. Despite the many reservations which his delegation would have to make with respect to that text, it could be usefully included in a revised version of the negotiating text or in any other document reflecting the positive results of the work accomplished since the sixth session. The legitimate rights and interests of the land-locked and geographically disadvantaged countries had been virtually ignored at the time of the preparation of the negotiating text and, from the political and moral standpoint, the compromise suggestions would improve the political climate and strengthen mutual confidence among States participating in the Conference. The inclusion of that text in the negotiating text would not mean, however, that it could not be improved or clarified at a later stage or that the negotiations on the subject had been concluded. Further negotiations were in fact indispensable in order to find a solution that would take into account the rights and interests of all States.

30. Mr. MAKEKA (Lesotho) said that document NG4/9/Rev.2 was an improvement on the provisions of the negotiating text and should replace the latter as a basis for future negotiations.

31. The question of the right of access of land-locked and geographically disadvantaged States to the authorized surplus had proved to be a stumbling block in negotiations, especially since there were regional understandings granting certain rights to participate in the harvest as opposed to the surplus. His delegation had therefore proposed an amendment to article 69, paragraphs 1 and 5, and to article 70, paragraphs 1 and 6, and had thought that that amendment might lead to a consensus; but it had been surprised to hear the Chairman say that he had been unable to amend the proposal contained in document NG4/9/Rev.2 in the absence of the consensus. He added that it had been difficult, if not impossible, to circulate that constructive amendment as a document of the Negotiating Group and, as a result, delegations had been unable to study the proposals in depth. His delegation hoped that steps would be taken in future to improve the procedure for circulating proposals.

32. Mr. ANDERSEN (Iceland) congratulated Mr. Nandan on finding a balance between the positions of the parties concerned and said that the delegation of Iceland supported his recommendations.

33. Mr. MONNIER (Switzerland) said that, in spite of reservations which his delegation would be obliged to express regarding articles 69 and 70 as they appeared in document NG4/9/Rev.2—reservations concerning the arbitrary distinction made between developed and developing countries—it felt that the new text offered substantially improved prospects of a consensus and should therefore be included in the negotiating text.

34. Mr. ROBINSON (Jamaica) said that the text proposed by Mr. Nandan did not ideally meet the expectations of the Jamaican delegation but constituted an acceptable basis for defining a common position for the Group. His delegation supported the proposal by the Yugoslav and Romanian delegations, the underlying principles of which safeguarded the interests of the developing countries. That proposal should however be brought into line with the major claims of the land-locked and geographically disadvantaged States.

35. Mr. DLAMINI (Swaziland) said that, though not ideal, the report of Negotiating Group 4 was in many respects an improvement on the negotiating text and, because of its positive elements, constituted a good basis for compromise. It should therefore replace the negotiating text, on the understanding that it could be improved whenever that would be possible.

36. The proposal submitted by Yugoslavia and Romania would, in spite of the good intentions underlying it, upset the delicate balance achieved in the document submitted by Mr. Nandan and, since his delegation was anxious to reach a compromise as quickly as possible, it thought that the amendment to article 62, paragraph 2, as reproduced in document NG4/9/Rev.2, should be retained.

37. Mr. IBÁÑEZ (Spain) said that he had serious reservations regarding document NG4/9/Rev.2, with respect to the treatment accorded to developed States with special geographical characteristics or land-locked developed States. There was no reason to give them any special consideration or any priority. Their situation as developed States should be enough to exclude them from the category of disadvantaged States. His delegation could not therefore agree that they should be accorded certain privileges and, accordingly, it had reservations with respect to articles 69 and 70 and also article 62 in the proposals made by Mr. Nandan. The proposal appearing in document C.2/Informal Meeting/41, and particularly

the last two lines, were also unacceptable to his delegation since the formulation proposed by Mr. Nandan for article 62, paragraph 2, although theoretically inoffensive, might have substantial implications. Those considerations should be kept in mind in elaborating a balanced formula that would offer better prospects for consensus and take into account more fully the various interests involved. In the circumstances, his delegation felt it preferable to retain the negotiating text as it stood.

38. Mr. KRÁL (Czechoslovakia) said that his delegation, as a member of the group of land-locked and geographically disadvantaged States, was not satisfied with the compromise text in document NG4/9/Rev.2, which was very far from its idea of a just and equitable solution to the problem of the rights of land-locked States or States with special geographical characteristics. His delegation had already expressed its reservations and wished now merely to state that the compromise text, nevertheless, contained certain improvements on the negotiating text and better reflected the progress made in the negotiations and the various views expressed during the eighth session. His delegation therefore agreed that the proposed wording should be incorporated in the revised negotiating text since it offered better prospects of a consensus.

39. Mr. FOSTERVOLL (Norway) said that the text of document NG4/9/Rev.2 did not fully meet the expectations of his delegation which could, nevertheless, accept it as a compromise.

40. He endorsed the statements made by the representative of Mexico as Chairman of the group of coastal States.

41. Mr. CALERO RODRIGUES (Brazil) stated that his delegation could accept the text of article 69 proposed in document NG4/9/Rev.2, but not the text of article 70 on the rights of States with special geographical characteristics. In spite of those reservations, his delegation felt that the proposed formulation offered better prospects of a consensus than the initial text, and that it should therefore be included in the revised version of the negotiating text.

42. Mr. BREM (France), speaking on behalf of the States members of the European Economic Community, said that the position of those States had not changed since the seventh session. They still had certain reservations regarding the content of document NG4/9/Rev.2, but felt nevertheless that it contained some positive elements which could open the way to a compromise.

43. Mr. TAHINDRO (Madagascar) thought that document NG4/9/Rev.2 offered a good basis for consensus. As a coastal State, his country regarded it as the best possible compromise and could accept it with some serious reservations.

44. Mr. PHAM GIAN (Viet Nam) said that his country was prepared to co-operate with the neighbouring land-locked States or States with special geographic characteristics, and it accepted the compromise proposed by the Chairman of Negotiating Group 4 as a basis for future negotiations.

45. Mr. MAHMOOD (Pakistan) stated that, in his delegation's view, document NG4/9/Rev.2 could not serve as a basis for consensus for the reasons earlier explained by the representative of Ecuador. In particular, his delegation was strongly opposed to the use of the word "right" in paragraph 1 of article 69 and of article 70, and it could not accept the wording of article 69, paragraph 3, or article 70, paragraph 4, since the provisions contained therein were mandatory.

46. Mr. ZHUDRO (Union of Soviet Socialist Republics) reminded the Committee that his delegation had always supported the position of the geographically disadvantaged countries, which must be accorded the right to meet the requirements of their peoples by fishing and exploitation of marine resources.

47. The text in document NG4/9/Rev.2 was preferable to the negotiating text and was a step in the right direction because it gave land-locked countries and countries with special geographic characteristics the widely acceptable right to a share in marine resources.

48. His delegation felt that the results achieved could not be denied, and it was in favour of incorporating the above-mentioned text in the revised version of the negotiating text.

49. Mr. SYMONIDES (Poland) stated that document NG4/9/Rev.2 offered a better prospect for consensus than the initial text. His delegation believed that it should appear in the revised version of the negotiating text, though it had certain reservations on the matter.

50. Mr. NANANSALA (Philippines) thought that document NG4/9/Rev.2 was not fully satisfactory but offered improved prospects for a consensus. His delegation was therefore in favour of its incorporation in the revised negotiating text.

51. Mr. ROJANAPHRUK (Thailand) thought that the text in document NG4/9/Rev.2 was an improvement on the negotiating text and should appear in the revised version, though his delegation would have certain reservations regarding the text if the compromise on article 62, paragraph 2, were to affect the meaning of the provisions of article 62 in the negotiating text, especially paragraph 3.

52. His delegation also regarded the proposal by the Yugoslav and Romanian delegations as acceptable.

53. Mr. ZHELYAZKOV (Bulgaria) said that his delegation regarded the text in document NG4/9/Rev.2 as preferable to the negotiating text formulation and therefore supported its incorporation in the revised version.

54. The compromise formula thus proposed was by no means perfect and would have to be improved by negotiation after revision of the initial text.

55. His delegation had already observed that the concepts of subregion and region in articles 69 and 70 would have to be defined and was sorry that that concern of his delegation had not been mentioned in the report of the Chairman of the Negotiating Group submitted at the previous meeting. He hoped that that problem would be duly examined at a later stage.

56. Mr. PRANDLER (Hungary) said that although there were certain omissions in document NG4/9/Rev.2, his delegation would agree to its incorporation, as it stood, in the revised version of the negotiating text. He was, however, opposed to further amendments which would further weaken the position of the land-locked developed countries on any point.

57. Mr. SAMPER (Colombia) said that his delegation still had some difficulty in accepting the compromise text, especially with respect to the rights of States having special geographical characteristics, because it was not satisfied with the criteria used for defining them. In spite of those reservations, the proposed text still appeared to offer the best prospect of a consensus.

58. Mr. WISNOEMOERTI (Indonesia) said that his delegation agreed that the compromise text should appear in the revised version of the negotiating text, provided that amendments to its provisions could still be proposed at a later date.

59. Mr. ARCULUS (United Kingdom) recalled that the position expressed by the States members of the European Economic Community at the seventh session included approval of certain elements in the compromise formula and also various reservations on other points.

60. The proposal submitted by Yugoslavia and Romania deserved further study.

61. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) thought that document NG4/9/Rev.2 reflected quite accurately the state of the negotiations at the end of the present session and offered appreciably greater prospects of reaching a consensus. The formulation proposed was, therefore, a step in the right direction and should be included in the revised version of the negotiating text, with a view to further negotiations.

62. Mr. GAJARDO (Chile) observed that the representative of Mexico had already spoken on behalf of the group of coastal States, to which Chile belonged. The Chilean delegation endorsed the text in document NG4/9/Rev.2.

63. Mr. RABAZA VÁSQUEZ (Cuba) said that, in his delegation's view, the text in document NG4/9/Rev.2 should be incorporated in the revised version of the negotiating text.

64. Mr. NAKAGAWA (Japan) thought that the text in document NG4/9/Rev.2 constituted a balanced compromise and probably represented the best possible formula for agreement. His delegation therefore believed that it should be incorporated in the revised version of the negotiating text.

65. Mr. LUPINACCI (Uruguay) said that his delegation had reservations with respect to the use of the word "right" in paragraph 1 of article 69 and of article 70, and also on the wording of article 69, paragraph 3, and article 70, paragraph 4, because the ambiguous formulation which had been adopted might lead to a questioning of the concept of surpluses.

66. A precise definition should be given of the terms "region" and "subregion" because the proposed text had nothing to say on that point.

67. His delegation agreed with the Colombian delegation that the definition of the notion of a State with special geographic characteristics was inadequate, and it supported the observations of the Spanish delegation regarding article 62, paragraph 2.

68. It nevertheless felt that the text in document NG4/9/Rev.2 offered better prospects of a consensus than the initial text and it thought therefore, that the text should be incorporated in the revised version of the negotiating text with a view to future negotiations.

69. Mr. ENKHSAIKHAN (Mongolia) said that his delegation was not completely satisfied with the text in document NG4/9/Rev.2, which did nevertheless contain certain improvements on the initial text and offered a fair basis for further negotiations. His delegation had no objection to its incorporation in the revised version of the negotiating text.

70. Mr. CHANG-CHOON LEE (Republic of Korea) said that, in his delegation's view, the text in document NG4/9/Rev.2 could not serve as a revised version of the provisions of the negotiating text which the Negotiating Group had considered.

71. With regard to article 70, his delegation preferred the provisions of the negotiating text, with certain improvements. With regard to article 62, it felt that the proposal by the Romanian and Yugoslav delegations should be considered further because it might help to improve the provisions of article 62.

72. Mr. THOMAS (Guyana) said that his delegation believed that the text in document NG4/9/Rev.2 should be incorporated in the revised version of the negotiating text because it was the best formula to emerge from the discussions of the Negotiating Group.

73. Mr. CLINGAN (United States of America) observed that the text in document NG4/9/Rev.2 met the minimum requirements of many delegations and should constitute a good point of departure for a future compromise. His delegation therefore believed that it should be incorporated in the revised version of the negotiating text.

74. Mr. BAYONNE (Congo), after noting that the representative of Mexico had already spoken on behalf of the coastal States, said that his own delegation regarded the text in document NG4/9/Rev.2 as a step forward towards a consensus.

75. Mr. MOMTAZ (Iran) said that his delegation was in favour of incorporating the text of document NG4/9/Rev.2 in the revised version of the negotiating text, though it had certain reservations particularly regarding the definition of "region" and "subregion", which was of major importance.

76. He also supported the proposal by the Romanian and Yugoslav delegations because he thought it was better not to discriminate between different developing countries.

77. Mr. POP (Romania) thanked delegations which had supported the proposal by the Romanian and Yugoslav delegations. He noted that none of the representatives who had taken part in the discussion had expressed any basic objection to that proposal and he hoped that it would sooner or later be included in the text of document NG4/9/Rev.2.

78. The CHAIRMAN noted that, in spite of the reservations expressed by various delegations, the compromise text in document NG4/9/Rev.2 had received the general support of delegations as a text likely to facilitate a consensus. He pointed out that the reservations which had been made would sufficiently protect the delegations which had expressed them. If there were no objections, he would present that position of the Second Committee to the Conference in plenary meeting and would indicate that the formula had received widespread support because it offered a better possibility of consensus than the informal composite negotiating text.

It was so decided.

79. The CHAIRMAN stated that Negotiating Group 6 had held only six informal meetings during the eighth session and that the private consultations, while not producing the desired results, had nevertheless resulted in certain progress, in that some proposals had been approved and had received sufficient support to serve as a basis for future negotiations.

80. He thought that it was still possible to make a last effort to reach an agreement on a revision of the negotiating text before the end of the current session, since the positions of the different parties seemed to be closer on several points.

81. Mr. ATAÍDE (Portugal) said that the difficulty of the issues under consideration was such that a final solution could not be expected after only six meetings of the Negotiating Group. He was nevertheless convinced that the various concessions made by delegations offered a good point of departure for reaching a consensus in the Group.

82. Mr. HAYES (Ireland) said he hoped that the report which the Chairman had just presented on the discussions in Negotiating Group 6 would be published, so that delegations could study it with the attention it deserved. His delegation felt that the negotiations in Group 6 had resulted in a certain amount of progress, especially since the discussion on the Soviet proposal in the preceding week. A compromise now seemed possible on article 76, on the definition of the outer limits of the continental shelf. His delegation was ready to continue negotiations with a view to reaching a compromise on that issue.

83. Mr. JAYEWARDENE (Sri Lanka), referring to the definition of the outer limits of the continental shelf, pointed out that the formula proposed by Ireland applied only to certain types of continental margin belonging mainly to developed countries. However, certain countries which supported the Irish proposal had acknowledged the validity of the position of countries which opposed it, such as Sri Lanka. Some countries which had supported other proposals had also supported Sri Lanka's position, recognizing that it would be unfair to adopt the Irish proposal in its original form or to combine it with the Soviet proposal for the definition of fixed limits.

84. His delegation had, in document NG6/5, submitted a proposal for a fair definition of the continental margin. It would be unfair to adopt a formula which applied solely to two of the main types of continental margin, to the detriment of developing countries such as Sri Lanka. The Irish delegation had, moreover, supported Sri Lanka's proposal and intended to amend its own proposal. His delegation hoped therefore that its position would be taken into account in any revision of draft article 76.

85. Mr. BAYAGBOMA (Nigeria) wished to know whether other meetings of Negotiating Group 6 were planned before the end of the session or whether it was hoped that negotiations could be conducted in a small group. The Chairman had referred to the difficulties which he had encountered in establishing such a group, and the Nigerian delegation would like some clarification on that subject.

86. The CHAIRMAN replied that it was always possible to hold a plenary meeting in the framework of Negotiating Group 6 or elsewhere, since the position of States remained in principle the same; however, it was necessary that there should be a will to reach agreement. He himself would do whatever he could to realize such possibilities if they existed.

87. The difficulties he had encountered in establishing a small group related to the manner in which the various interests were to be represented. That was the only reason why no agreement had been possible. The establishment of a group was only one means of reaching an agreement; and it was necessary that a will to negotiate should exist. It was impossible to impose a solution when there was disagreement from the outset.

88. Mr. WISNOEMOERTI (Indonesia) said that, at the first meeting of Negotiating Group 6, his delegation had proposed the establishment of a small negotiating group and no delegation had objected to the idea at the time. He regretted that the group had not been established, owing to difficulties regarding its composition. If the parties directly concerned could propose a compromise formula before the end of the session, that would advance the work considerably; but, more realistically, his delegation suggested that, if no new result emerged before then, the establishment of a small working group should be included among the priority items for the next session. He had no doubt that, by that time, the Chairman would have suceeded in resolving the problems of the composition of the group and thought that once the group had found a solution, it could refer it to Negotiating Group 6 and then to the Second Committee.

89. The CHAIRMAN replied that he was prepared to establish such a group at the appropriate time and was in favour of the idea of considering that question at the beginning of the following session.

90. Mr. BARABOLYA (Union of Soviet Socialist Republics) felt that there was now a sufficient basis for reaching consensus on the definition of the outer limits of the continental shelf. It was essential for that purpose to establish precise criteria based on an indication of distance and depth.

91. His delegation regretted that it had not yet been possible to reach a consensus and asked all delegations to work towards that objective. The Soviet Union had already taken a step in that direction and was ready to co-operate with other delegations and with the Chairman with a view to reaching a consensus as soon as possible.

92. Mr. ATEIGA (Libyan Arab Jamahiriya) pointed out that the Arab countries had submitted a formula for defining the outer limits of the continental shelf and that their views on the subject had not changed. Those limits should be defined with due regard for the legal elements and for geomorphological considerations. He also stated that the Arab countries had inalienable interests in the zone in question and that the small negotiating group should take their position into account. The Arab countries were, nevertheless, prepared to co-operate as long as the principle envisaged was founded on equity and integrity.

93. The CHAIRMAN declared that the Second Committee had concluded its consideration of the report of Negotiating Group 6 and had in principle completed its deliberations. He thanked the Chairmen of the negotiating groups, the members of the Bureau and the secretariat staff who had helped the Committee in its task.

The meeting rose at 6.55 p.m.

Annex 81

Third United Nations Conference on the Law of the Sea, Official Records Vol. XIV, Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes, 23 August 1980, A/CONF.62/L.59

Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/L.59

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)*

16. The consideration of general provisions in plenary Conference was thus concluded and all items were disposed of with the exception of the proposal by Turkey concerning general principles and provisions (GP/7).

DOCUMENT A/CONF.62/L.59*

Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes

[Original: English]
[23 August 1980]

1. The plenary Conference held six informal meetings on the settlement of disputes during the current session.

2. The first item taken up was a note by the President contained in document SD/3 of 6 August 1980, which dealt with the questions of compulsory submission to conciliation procedure and the restructuring of Part XV for the purpose of clarity. The note had attached to it the textual changes to Part XV and annex V that were to achieve this result. After an initial consideration of the proposals in document SD/3, the President presented document SD/3/Add.1 which contained changes to the text of document SD/3.

3. The structure suggested for Part XV suggested in document SD/3 met with a favourable response, and it appeared that the division of Part XV into three sections should be made. The sections are divided as follows: the first section, providing for the voluntary procedures; the second section, providing for the compulsory dispute settlement procedures entailing a binding decision; the third section, providing limitations and optional exceptions to the compulsory procedures referred to above. This third section thus includes all the cases where there is obligatory submission to conciliation procedure.

4. In addition, a second section to annex V was proposed in document SD/3 to govern the conciliation procedures to which there is an obligation to accept submission under the new section 3 of Part XV.

5. It was pointed out by the President both in document SD/3 and in the course of the meetings that the changes were suggested in an attempt to clarify and co-ordinate all the provisions which set out the new and unique régime for the settlement of disputes arising under the proposed convention. It was made clear by the President that changes of a substantive nature were not intended and would not be considered. Changes relating to outstanding hardcore issues under negotiation elsewhere were also not to be considered at this stage. In particular, it was to be understood that all changes regarding Part XV and its related annexes were to be made without reference to the question of article 298, paragraph 1 (*a*) concerning the settlement of delimitation disputes. It was also understood that an examination of this paragraph may be required at an appropriate time. In addition, other paragraphs of article 298, specifically paragraphs 3 and 4, may have to be reconciled with any new formulation that may emerge for paragraph 1 (*a*) of that article. A footnote to this effect was appended to document SD/3/Add.1.

6. The course of the negotiations conducted in the informal plenary meetings may be summarized as follows. Informal suggestions were made by some of the participants in the course of their interventions. These included suggestions regarding both drafting and substance. In particular, two suggestions were made which touched upon the question of delimitation, which were: firstly, that a cross-reference to article 298 *bis* of document SD/3 be made in article 298.1 (*a*) (ii); secondly, the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compulsory dispute settlement procedures and from compulsory submission to conciliation procedures as provided in article 298, paragraph 1 (*a*). These should be included in article 296 with the other exceptions in that article. The exclusion of future delimitation disputes by declaration would remain in article 298. Where no settlement had been reached, such disputes would be submitted to conciliation at the request of any party and the other party would be obliged to accept this procedure.

7. The President had stressed, both in document SD/3 and at the commencement of these negotiations, that changes of substance should be avoided, in particular, any changes concerning the texts of article 296, paragraphs 2 and 3. Since delicate compromises that had been very carefully negotiated are contained in that article, any attempt to raise these questions should be avoided. He pointed out that article 298, paragraph 1 (*a*), was closely linked to the delimitation issue. The President further stressed that attention should be concentrated on the structural changes alone to the exclusion of substantive changes. So far as paragraph 1 (*a*) was concerned even structural changes should be avoided.

8. The other informal suggestions made during these negotiations and accepted without objection or reservation by the informal plenary Conference were as follows:

(*a*) the suggestion to add to the title of article 282 a reference to "or other instruments". It was referred to in paragraph 1 of document SD/3/Add.1. This was found to be generally acceptable;

(*b*) the suggestion to add a reference to "Section 1 of" in paragraphs 2 and 3 of article 284, before the reference to "annex V". It was referred to in paragraph 2 of document SD/3/Add.1. This was considered a logical and necessary change, which makes paragraphs 2 and 3 consistent with paragraphs 1 and 4 of article 284 of document SD/3;

(*c*) the suggestion that article 287, paragraph 6 can be ended after the words "deposited with the Secretary-General", as the rest of its content is covered in paragraph 8 of that article. It was referred to in paragraph 3 of document SD/3/Add.1. This was also considered to be a sound suggestion and was accepted;

(*d*) the suggestion to reinstate article 296, paragraph 3 (*d*) as it appears in A/CONF.62/WP.10/Rev.2, and to delete article 15 of annex V in document SD/3 which was intended to replace it. This was referred to in paragraph 4 of document SD/3/Add.1. The suggestion was accepted without objection;

(*e*) the suggestion to give article 298 *bis* a title as follows: "Right of the parties to agree upon procedure". This was referred to in paragraph 5 of SD/3/Add.1, and it was accepted;

(*f*) the suggestion concerning the inadequacy of the scope of article 298 *bis*, which did not fully reflect, and cannot be a complete substitute for, the phrase "unless otherwise agreed on or decided by the parties concerned" in article 296, paragraphs 2 (*a*) and 3 (*a*), which it was intended to replace. As a minor addition to article 298 *bis* could alleviate this concern the following change to article 298 *bis* was suggested by the President: in paragraph 2, after the words "right of the parties to the dispute to agree to" insert "or decide upon" and continue the sentence as

* Incorporating document A/CONF.62/L.59/Corr.1 dated 23 September 1980.

it appears in document SD/3. This was referred to in paragraph 6 of document SD/3/Add.1, and was accepted;

(*g*) the suggestion that in the substantive text in Part XV and in annex V reference should be made to "Compulsory Submission to Conciliation". It seemed unnecessary to do so in the provisions of Part XV which merely express the obligation to submit to that procedure. But, as it did seem desirable to change the title, it was dealt with as follows: in section 2 of annex V, the title was changed to read "Compulsory Submission to Conciliation Procedure in accordance with section 3 of Part XV". This was referred to in paragraph 7 of document SD/3/Add.1. It was accepted subject to a drafting change. The title would thus read "Obligatory submission to conciliation procedure in accordance with Section 3 of Part XV at the request of any party";

(*h*) the suggestion to delete the words "*mutatis mutandis*" in annex V, article 12, and to substitute "subject to the provisions of this section". This was similar to the concern expressed over, and the suggestion to delete, the reference to *mutatis mutandis* in article 285 for the reason that it may not completely express the real intent. They were both considered questions of drafting. The change to annex V, article 12, was referred to in paragraph 8 of document SD/3/Add.1, and was accepted;

(*i*) the suggestion that article 297 be moved to section 2 of Part XV and located between articles 293 and 294. This was referred to in paragraph 10 of document SD/3/Add.1. It was explained that article 297 deals with compulsory procedures entailing a binding decision under section 2, whereas the other articles in new section 3 provide limitations and exceptions to the applicability of section 2. To maintain the purpose of each section in a coherent form, it was felt that article 297 would be more appropriately placed in section 2. It was suggested that it appear between articles 293 and 294. This suggestion was also accepted. The subsequent articles would have to be renumbered accordingly.

(*j*) the suggestion to change the title of Part XV, section 1, to read "General Provisions" rather than "General Obligations", which was the title suggested in document SD/3. The President suggested that the two concepts could be combined so that the title would read "General Provisions and General Obligations". There was no opposition to this suggestion, and it was accepted;

(*k*) the suggestion by the President to replace in article 282, line 4, the phrase "final and binding procedure" with the phrase "procedure entailing a binding decision". The intent of article 282 is that the procedure should be compulsory and that it should entail a binding result. Having regard to the emergency of obligatory submission to conciliation at the request of any party, article 282 could be confusing. In order to clarify it, reference has to be made to "a procedure entailing a binding decision". This suggestion was accepted.

9. The other suggestions made but which were found not to be essential or which did not receive sufficient support were as follows:

(*a*) that the annexes and in particular the annex dealing with conciliation (annex V) should have the same status as the convention itself. It was explained that the annex provides not only for technical matters, but several substantive matters of consequence. In the consideration of the final clauses, attention should, therefore, be paid to the need for safeguarding the status of the annexes in the same manner as the rest of the convention. This was particularly important in regard to the question of amendment. The President stated that he would take note of this in the negotiations regarding the final clauses. Further consideration of this issue was, therefore, not required;

(*b*) the suggestion that a provision should be added at the end of section 2 of annex V to provide for an amendment procedure regarding that annex which could be drafted on the lines of annex VI, article 42, paragraph 1. It was pointed out that while such a provision was appropriate and necessary in the case of a preconstituted tribunal such as the Law of the Sea Tribunal, especially due to the need to permit the Tribunal to make proposals concerning amendments to its Statute under paragraph 2 of article 42, such a power to initiate would not be appropriate for an *ad hoc* conciliation commission. No such provision exists as regards the other *ad hoc* procedures, such as arbitration under annex VII and the special arbitration procedures under annex VIII. The President suggested that the issue could be resolved by making clear in the final clauses provisions that the annexes have the same status as the convention for the purpose of making amendments to them.

(*c*) the suggestion to insert a special section on conciliation between the present sections 1 and 2. While this was one possible way of structuring Part XV, the structure presented in document SD/3 was another alternative. There seemed to be a preference for the structure presented in document SD/3 as it reflected correctly the evolution of the system of dispute settlement in the Conference;

(*d*) the suggestion that article 284, paragraph 4 should make specific reference to article 8 of annex V rather than a general reference. This was not considered to be appropriate as there are other articles which provide for termination of the conciliation procedure, and it was not practical to list all;

(*e*) the suggestion to delete several articles in section 1 of Part XV, particularly those that repeated obligations under the United Nations Charter or those generally accepted under international law. This appeared to be a major change at this late stage of the negotiations, especially since those articles have been present from the very outset in document A/CONF.62/WP.9 and are considered important by many delegations. It was pointed out by the President that although several of the articles in section 1 were hortatory and not essential, it is not unusual for this convention to reiterate other obligations under the Charter. Furthermore, these provisions are not in conflict with the Charter and they should be left since they strengthen the régime under Part XV. It was also pointed out that the intention was to provide a comprehensive system for settlement of disputes and that end would be served by maintaining Section 1 as it is. This suggestion was not pursued;

(*f*) the suggestion to delete articles 13 and 14 of annex V in document SD/3 was opposed by several delegations on the grounds that article 13 was necessary to clarify the compulsory nature of the conciliation procedure, and that article 14 was necessary as it is customary for bodies having compulsory jurisdiction to determine their own competence, as well as because it is consistent with the other settlement of disputes procedures in Part XV. For these reasons, the suggestion was not accepted;

(*g*) the suggestion that the conciliation commission constituted under annex V should give reasons for its decision. A proposed formulation for such a provision was referred to in paragraph 9 of document SD/3/Add.1 for a new article 15 to appear in section 2 of annex V. Several delegations were of the view that the inclusion of such an article would constitute a substantive change and was, therefore, outside the scope of the examination by the plenary Conference at that stage. The proposal for a new article 15 of annex V was rejected. Annex V as found in document SD/3 would, therefore, only contain 14 articles;

(*h*) the suggestion to add a reference to "assessors" in article 289. The question was raised regarding the compatibility of article 289 with article 30.2 of the Statute of the International Court of Justice. Article 289 provides for "experts" to sit with the court or tribunal without the right to vote, whereas the Statute of the International Court of Justice provides for "assessors" who would perform essentially the same functions. It was suggested that these two provisions could be reconciled by the addition after the words ". . . to sit with such Court or Tribunal" of the words "as assessors" in article 289. After some discussion, it was decided that such an addition was not necessary as the International Court of Justice, when exercising jurisdiction under article 289, was not precluded from applying the provisions of its

statute concerning assessors in a manner compatible with the provisions of article 289;

(*i*) the suggestion to add to article 42 of annex VI a reference to the amendment procedures contained in the final clauses provisions. This appeared to be an unnecessary addition, as the procedures established for amendment of the convention as a whole would also apply to amendment of the annexes. Annex VI, article 42, paragraph 1 of document A/CONF.62/WP.10/Rev.2 makes it clear that the statute of the Law of the Sea Tribunal may be amended by the same procedure as provided for amendments to this convention. The suggestion was not pursued. It has been dealt with in relation to the final clauses;

(*j*) the suggestion by the President to add a paragraph to article 15 of annex VI in order to provide jurisdiction for a special chamber of the Law of the Sea Tribunal acting in accordance with article 188, paragraph 1 (*a*). This suggestion was contained in document SD/4 dated 15 August 1980. It was found unnecessary to include an additional provision to cover such jurisdiction as it was felt to be already covered by other provisions.

10. The President informed the plenary Conference that the Secretary-General of the Inter-Governmental Maritime Consultative Organization had brought to his attention the need for clarification with regard to the references to pollution from vessels in articles 1 and 2 of Annex VIII of document A/CONF.62/WP.10/Rev.2 on Special Arbitration Procedures. It seemed necessary to add appropriate references to "dumping" with regard to the kinds of disputes listed in article 1, and the fields of expertise and the lists of experts to be maintained by the appropriate intergovernmental organizations in article 2. The President, having consulted the Chairman of the Third Committee, suggested the following changes, which were approved by the plenary Conference: in article 1, and at the end of the first sentence in article 2, after "vessels" add "and by dumping"; in line 8 of article 2, after "navigation" add "including pollution from vessels and by dumping."

11. There were minor drafting changes to document A/CONF.62/WP.10/Rev.2 which were brought before the plenary Conference by the President and were approved. They are as follows: in annex VI, article 4, paragraph 1, replace "a list" by "the list"; in article 17, paragraph 6, replace "required by article 2, article 8, paragraph 1, and article 11" by "required by articles 2, 8 and 11"; in article 29, line 5, replace "the decision" by "the claim"; in article 37, paragraph 2, line 3, replace "members" by "member" and in line 5 after "promptly make such" add "appointment or"; in annex VII, article 9, line 6, replace "the award" by "the claim".

12. The plenary Conference in informal meeting also considered the President's proposal that the title of the Law of the Sea Tribunal be changed. The President explained that the title was pedestrian and did not adequately describe the international status and the dignity of the tribunal to be established under this convention. The President, therefore, suggested that the name be changed to "International Tribunal for the Law of the Sea". This was accepted without objection. The change will have to be effected in all provisions of the informal composite negotiating text where there are references to the Tribunal.

DOCUMENT A/CONF.62/L.60*

Preliminary report of the President on the work of the informal plenary meeting of the Conference on final clauses

[Original: English]
[23 August 1980]

Consideration of the final clauses by the informal plenary Conference was taken up during the resumed session at fifteen meetings.

A full report on the negotiations relating to this subject will be submitted in due course.

The results may be summarized as follows:

Article 299—Signature; Article 300—Ratification; Article 301—Accession

These three articles as they appeared in document FC/21/Rev.1 were found acceptable except that the final form of articles 299 and 301 will depend on the decisions as to who may sign and who may accede to the convention. The appropriate dates will also have to be inserted in article 299.

Article 302—Entry into force

This article as appearing in document FC/21/Rev.1 was also found acceptable subject to the foot-notes appended to paragraphs 3 and 4.

The foot-note to paragraph 4 is intended to indicate that the question of the preparatory commission including its decision-making procedure must be considered in conjunction with the results of the negotiations on the related provisions in the First Committee.

It was agreed that from the very date of entry into force of the convention there must be a set of rules, regulations and procedures to enable the Authority to function. The question of the period of applicability of these rules, regulations and procedures and as to what will replace them on the expiry of that period has to be considered.

It was also decided that the number of instruments of ratification or accession required for entry into force of the convention under paragraph 1 should be 60 as specified in that paragraph.

Article 303—Reservations and exceptions

The text of article 303 as appearing in document FC/21/Rev.1/Add.1 was found acceptable together with the foot-note referred to in that document on the understanding that the articles referred to in the text must be interpreted to mean that a reservation would be permitted only where the substantive article specifically uses the term "reservation". An exception would be permitted only where the substantive articles specifically use the term "exception". It must be clearly understood that article 303 does not permit exceptions by any State Party to optional exceptions made by any other State Party under paragraph 1 (*a*) of article 298. It is also to be understood that the formulation of article 303 in document FC/21/Rev.1/Add.1 does not permit either of reservations to exceptions or of exceptions to reservations.

Some of the delegations that found difficulty, as a matter of principle, in renouncing the right to enter reservations were prepared to acquiesce in the text of the article provided the foot-note was retained.

Article 304—Declarations and statements

This article was found acceptable together with the foot-note appended to it in document FC/21/Rev.1. Declarations under article 287 are to be understood as being separate and distinct from

* Incorporating document A/CONF.62/L.60/Corr.1 dated 23 August 1981.

Annex 82

Telegram No. 150 dated 18 September 1981 from UK Foreign and Commonwealth Office to British High Commission, Port Louis

[redacted]

27352 - 1

RR PORT LOUIS

GRS 168

[redacted]

FM FCO 171630Z SEPTEMBER 81
TO ROUTINE PORT LOUIS
TELEGRAM NUMBER 150 OF 17 SEPTEMBER
INFO RNLO DIEGO GARCIA, MODUK DS5 AND DS11

YOUR TELNO 191: CHAGOS ISLANDS: FISHING RIGHTS

1. AS PART OF THE 1965 AGREEMENT WITH MAURITIUS ON THE DETACHMENT OF THE CHAGOS ISLANDS, WE GAVE AN UNDERTAKING TO THE MAURITIANS THAT THEIR TRADITIONAL FISHING RIGHTS IN THE CHAGOS ARCHIPELAGO WOULD BE UPHELD AS FAR AS IS PRACTICABLE.

2. ARTICLE 4 OF BIOT ORDINANCE NO 2 OF 1971 MADE PROVISION FOR THIS UNDERTAKING, BY ENABLING TRADITIONAL FISHING TO CARRY ON IN THE CONTIGUOUS ZONE VIZ THE 3-9 MILE ZONE. (LA PERLE WAS FOUND WITHIN THE TERRITORIAL WATERS 3 MILE LIMIT).

3. IT APPEARS FROM OUR FILES THAT AN ORDER BY THE COMMISSIONER DESIGNATING MAURITIANS AS TRADITIONAL FISHERMEN HAS NEVER BEEN MADE, BUT APPARENTLY THEY WERE INFORMED IN 1971 THEY HAD BEEN SO DESIGNATED. (WARD'S LETTER OF 13 APRIL 1978 TO EAD).

4. FISHING AROUND DIEGO GARCIA IS GOVERNED BY ARTICLE 13 OF THE 1976 EXCHANGE OF NOTES WITH THE AMERICANS.

CARRINGTON

[illegible]
DIST
[illegible]
EAD
DEF DEPT
NALD
LEGAL ADVISERS
RES. D.

1

[redacted]

Annex 83

Minute dated 13 October 1981 from A.D. Watts to [name redacted], "Extension of the Territorial Sea: BIOT"

Reference (3)

cc Mr Hewitt EAD

+ pa 2. 15/10 (14)

EXTENSION OF THE TERRITORIAL SEA: BIOT

1. Thank you for letting me see your minute of 8 October.

2. You are right in thinking that Mauritius has a distinct interest in anything we do regarding fishing rights in the waters of BIOT. An agreement was reached with Mauritius in 1965 on this matter, but it was not an Agreement in a tidy and formal sense. According to papers which I have the terms of the agreement are to be found in a Colonial Office letter of 6 October 1965, read together with an extract from debates in the Mauritius Legislative Assembly on 21 December 1965 and a statement by the Mauritius Government of 10 November 1965. These 1965 arrangements were referred to in a letter from the Prime Minister of Mauritius dated 24 March 1973, and of the various documents I have mentioned this is the only one of which I have a copy, which I attach. As you say in your minute, precisely what fishing rights Mauritius has reserved to itself with our agreement is a matter which will need looking into when the department produces the files.

3. So far as concerns fisheries legislation applying in BIOT, there is a Fishery Limits Ordinance 1971 (Ordinance No. 2/1971) which was made by the Commissioner in BIOT. It defines 'fishery limits' as meaning the territorial sea of BIOT, together with the contiguous zone, which zone is itself defined with reference to a proclamation made in 1969. So far as I know, these are still the applicable instruments in this context, but EAD will be able to check.

4. So far as one is thrown back to the general law in BIOT, it is, by virtue of the various BIOT Orders made since 1965, the law enforced in Mauritius on 8 November 1965, adapted as may be necessary to bring it into conformity with the provisions of the Orders, but subject always to any laws made for BIOT by the Commissioner under the law-making power conferred upon him by the Orders. Since at the relevant time Mauritius was a colony, I think we can take it that the breadth of the territorial sea was in 1965 three miles, and so far as I know there has been no law made for BIOT since then extending the breadth of the territorial sea.

5. You may wish to keep this minute until you get papers in response to your minute of 8 October to Mr Mohan, but if you wish to send this minute to him, to assist him in his researches, please do so.

A D Watts

13 October 1981

Mr Mohan
This is useful - should go on file.
WLamont

Sir Seewoosagur Ramgoolam, K.B.E., M.P.
Minister of Defence, Internal Security and Minister of Information and Broadcasting

Government House,
Port Louis,
Mauritius.

24th March, 1973

Your Excellency,

Please refer to the second paragraph of your letter 32/1 of the 7th February.

This is to acknowledge, with thanks, receipt of £650,000 by the Mauritius Government in full and final discharge of your Government's undertaking, given in 1965, to meet the settlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago.

The payment does not in any way affect the verbal agreement on minerals, fishing and prospecting rights reached at the meeting at Lancaster House on the 23rd September, 1965, and is in particular subject to:

(i) the British Government using their good offices with the U.S. Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(ii) the British Government doing their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work on the islands;

(iii) the British Government using their good offices with the U.S. Government to ensure that navigational and meteorological facilities in the Chagos Archipelago would remain available to the Mauritius Government;

(iv) Mauritius reserving to itself:

(a) fishing rights

(b) use of air strip for emergency landing and for refuelling civil aircraft without disembarkation of passengers.

(v) the right of prospection and the benefit of any minerals or oil discovered in or near the Chagos Archipelago reverting to the Mauritius Government.

(vi) the return of the islands to Mauritius without compensation, if the need for use by Great Britain of the islands disappeared.

Annex 84

Extracts from Platzöder, R. (ed), Third United Nations Conference on the Law of the Sea: Documents (New York: Oceana Publications, 1982)

NG7/38
17 April 1979

Original: ENGLISH

Suggested Compromise Formula for Articles 74 (3) and 83 (3) prepared by a private group convened by the Chairman of NG7

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort with a view to entering into provisional arrangements. Accordingly, during this transitory period, they shall refrain from activities or measures which may aggravate the situation and thus hamper in any way the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

NG7/39
20 April 1979

Original: ENGLISH

Report of the Chairman on the work of Negotiating Group 7

The Negotiating Group was established in accordance with the decisions taken by the Plenary at its 90th meeting on 13 April 1978 (document A/CONF.62/62) to deal with the hard-core issue of delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon. Accordingly the Group was to consider articles 15, 74, 83 and 297 1 (a) of the ICNT. In its work the Group had to take into account that for the possible modification or revision of the ICNT only such solutions could be suggested, as a result of the Group's deliberations, which could be found to offer a substantially improved prospect of a consensus. During the seventh and eighth sessions of the Conference the Group convened in a total of 41 meetings, with 39 working documents being distributed in the course of its discussions.

Results of negotiations

Article 15

As stated in my report of 17 May 1978 (document NG7/21), there would seem to be widespread support to the retention of the present formulation, in the ICNT, of article 15 with two drafting amendments. Accordingly the text would read as follows:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Articles 74/83 (1)

From the outset the negotiations were characterized by the opposing positions of delegations supporting the equidistance rule and those specifically emphasizing delimitation in accordance with equitable principles.

At the end of the seventh session I stated in my report (document NG7/24) that during the discussions general understanding had seemed to emerge to the effect that, in broad terms, the final solution could contain the following four elements: (1) a reference to the effect that any measure of delimitation should be effected by agreement; (2) a reference to the effect that all relevant or special circumstances are to be taken into account in the process of delimitation; (3) in some form, a reference to equity or equitable principles; (4) in some form, a reference to the median or equidistance line.

This scheme was further referred to in my statement at the beginning of the present session (document NG7/26), wherein I also expressed the view that the necessary compromise might be within reach if the Group could agree upon a "neutral" formula avoiding any classification or hierarchy of the elements concerned.

During the present session a number of compromise proposals were made, particularly by the delegations of Mexico and Peru. At least one of them, that contained in document NG7/36, received a fair amount of interest as a possible basis for further negotiations. The proposal, as well as a revised version thereof (document NG7/36/Rev.1), was, however, later withdrawn by its sponsors.

Despite intensive negotiations, the Group did not succeed in reaching agreement on any of the texts before it. The reasons why the various compromise efforts made during the Group's work did not succeed have been clearly voiced by different delegations. I will not, of course, criticize those reasons, being most important to the respective delegations, but personally I doubt, whether, in view of our lengthy deliberations and taking into account the controversies still prevailing, the Conference may ever be in a position to produce a provision which would offer a precise and definite answer to the question of delimitation criteria.

In the light of the various suggestions presented, and assuming that, in one form or another, negotiations on the issue of delimitation are to be continued at the next stage of the Conference, the following text is offered as the Chair's assessment of a possible basis for a compromise:

> The delimitation of the exclusive economic zone (or of the continental shelf) between States with opposite or adjacent coasts shall be effected by agreement between the parties concerned, taking into account all relevant criteria and special circumstances in order to arrive at a solution in accordance with equitable principles, applying the equidistance rule or such other means as are appropriate in each specific case.

Articles 74/83 (3)

As pointed out in my before mentioned statement at the beginning of the present session, the question of a rule on interim measures to be applied pending final delimitation has been approached from different angles. Some delegations did not consider such a provision necessary at all. Others advocated inclusion of provisions obliging or encouraging the parties, having a delimitation problem, to agree on provisional arrangements pending final delimitation. A number of delegations also found it necessary to suggest prohibitive rules against arbitrary exploitation of natural resources or other unilateral measures within the disputed area.

In addition to previous proposals several new formulations were introduced at the present session. In this regard main interest was accorded to the proposal by India, Iraq and Morocco, contained in document NG7/32, as well as the proposal by the Chair (document NG7/38) presented after consultations in a private group composed of the three delegations mentioned above and the delegations of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic.

Though these proposals seemed to signify a step forward in the search for a compromise, they did not gain such widespread and substantial support that would justify a revision of the ICNT. In view of the comments made, it would seem that the most serious difficulty with these proposals concerned the prohibitive references therein to activities or measures potentially to be taken during the transitional period. A number of delegations criticized the proposals of introducing what they felt to be a moratorium arguably prohibiting any economic activities in the disputed area.

For the facilitation of possible further discussions on this paragraph the following text is offered as based upon my previous compromise suggestion (document NG7/38):

> Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort with a view to entering into provisional arrangements. Accordingly, during this transitional period, they shall refrain from aggravating the situation or hampering in any way the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

Article 74 (4)

As stated in my report of 17 May 1978 (document NG7/21) it would seem that the location in the Convention of the definition of the median or equidistance line, if such a definition were deemed to be necessary, could be left for consideration in the Drafting Committee.

Article 74 (5) and Article 83 (4)

As relating to the paragraph concerned in Article 74, but potentially as applicable to article 83, too, a proposal was made that the word "all" should be added before the word "questions". No conclusion was drawn on this point.

Article 297 1(a) (and Articles 74/83 (2))

The discussions on the settlement of maritime boundary disputes were characterized by opposing arguments on the nature of settlement procedures.

During the seventh session a paper (NG7/20) containing a set of alternative approaches relating to article 297 1(a) was issued as a result of discussions held within an expert group led by Professor L.B. Sohn (United States of America). The paper was subsequently revised by Professor Sohn (document NG7/20/Rev.1) who, later on, also presented an extensive survey (document NG7/27) of various combinations of the main elements potentially to be taken into account in the consideration of the settlement of delimitation disputes. In order to narrow the ground for the reaching of the final compromise Professor Sohn further presented a paper (document NG7/37) containing four alternative basic choices for treatment of maritime boundary disputes.

The tireless efforts of Professor Sohn have markedly contributed to the work of the Group whose gratitude for his valuable services will hereby be brought to the Conference records.

Despite lengthy discussions the Group was not able to solve this issue which, therefore, still remains open. In my before mentioned statement at the beginning of the present session I expressed the view that there did not seem to be much prospect of finding the sought-after compromise on the basis of a rule which in one form or another would provide for the acceptance of a compulsory procedure entailing a binding decision. The discussions held during the present session have left me with the impression that no change in this regard has taken place. Although it was abundantly clear that several delegations still remain determined to advocate compulsory and binding procedures, it would seem similarly clear that a consensus may not materialize as based on such a solution.

To indicate, with a reference to my statement of 5 April 1979 (document NG7/33), one alternative which perhaps could, in future consideration, prove conducive to the final compromise, the Chair would offer the following formulation of Article 297 1(a), borrowing elements, in particular, from Professor Sohn's papers, the proposal by Israel, contained in document NG7/30, and the proposal by Bulgaria, contained in document NG7/5:

> Disputes concerning sea boundary delimitations between States with opposite or adjacent coasts, or those involving historic bays or titles, provided that the State having made such a declaration shall, when, thereafter, such dispute arises and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284 paragraph 3, accept submission of the dispute to the conciliation procedure provided for in Annex IV; and provided further that such procedure shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory.
>
> After the Conciliation Commission has presented its report, the parties shall negotiate an agreement on the basis of that report. If these negotiations do not result in an agreement within a period of _____ from the date of the Commission's report, the parties to the dispute shall, by mutual consent, submit the question to the procedures provided for in Section 2 of Part XV, unless the parties otherwise agree.

When submitting this suggestion I am well aware that it does not fully correspond to the established positions of many delegations including those who have considered that the conciliation procedure should only relate to basic questions outstanding between the parties with respect to the specific circumstances, principles or methods which shall be considered by the parties concerned in

resolving the issue in dispute. In my understanding, however, the suggestion may reflect a realistic view of the situation we find ourselves in.

In this connexion it may also be pointed out that proposals were made for the modification of the "chapeau" of article 297 and for the deletion of paragraph 2 of article 74 (with possible deletion of the corresponding paragraph of article 83, as well). No conclusions were drawn on these points.

In view of what is said above, it is to be concluded that, except for the two drafting amendments to article 15, none of the proposals made during the work of the Group for the modification or revision of the ICNT either secured a consensus within the Group or seemed to offer a substantially improved prospect of a consensus in the Plenary. Accordingly, besides the said changes to article 15, I would not find myself in a position to suggest any modification or revision of the ICNT to be made as based on the work of Negotiating Group 7.

On the other hand, and without prejudice to the organizational pattern of future work, it is my understanding that there is a general feeling in the Group that negotiations on the issues still pending solution should be continued; and that this feeling was strengthened by the positive attitude of several delegations, particularly during the final stage of our negotiations. In this connexion it may further be recalled that it has been repeatedly pointed out by many delegations that the issues concerned are closely interrelated and should, also in the future, be considered together as elements of a "package".

Last but not least, I would like to express my devoted thanks to the members of the Secretariat, assigned to our Group, for all their valuable help and assistance during the past year.

NG7/27
27 March 1979
Original: ENGLISH

INFORMAL WORKING PAPER BY PROFESSOR LOUIS B. SOHN

MARITIME BOUNDARY DISPUTES

I. Basic choices for treatment of maritime boundary disputes

A. The following five alternatives might be considered for treatment of some or all disputes concerning maritime boundaries. Each alternative is accompanied by a sample text for paragraph 1 (a) of article 297 incorporating that treatment:

1. Complete exception from compulsory and binding settlement:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles.

2. Compulsory conciliation relating to basic questions regarding the specific circumstances, principles or methods which should be considered in resolving the dispute:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between the adjacent or opposite States, or those involving historic bays or titles except that, where no settlement has been reached by recourse to the provisions of Section 1 of this Part, the parties to the dispute shall, at the request of either of them and notwithstanding paragraph 3 of Article 284, submit to the conciliation procedure provided for in Annex IV any basic questions outstanding between them with respect to the specific circumstances, principles or methods which should be considered by the parties concerned in resolving the issue in dispute.

3. Compulsory conciliation relating to the final delimitation:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles except that, where no settlement has been reached by recourse to the provisions of Section 1 of this Part, the parties to the dispute shall, at the request of either of them and notwithstanding paragraph 3 of Article 284, submit to the conciliation procedure provided for in Annex IV the question of the final delimitation of the boundary.

4. Compulsory and binding third-party settlement relating to basic questions regarding the specific circumstances, principles or methods which shall be considered in resolving the dispute:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles except that, where no settlement has been reached by recourse to the provisions of Section 1 of this Part, the parties to the dispute shall, at the request of either of them, submit to the procedures provided for in Section 2 of this Part any basic questions outstanding between them with respect to the specific circumstances, principles or methods which shall be considered by the parties concerned in resolving the issue in dispute.

5. Compulsory and binding third-party settlement relating to the final delimitation:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles except that, where no settlement has been reached by recourse to the provisions of Section 1 of this Part, the parties to the dispute shall, at the request of either of them, submit to the procedures provided for in Section 2 of this Part the question of the final delimitation of the boundary.

[Alternatively, paragraph 1 (a) of Article 297 could be deleted entirely.]

B. Any one of these alternatives or a combination of them can be applied to all disputes, or a distinction may be made between past and future disputes. In the case of options based on the past-future distinction, the text might read as follows:

Article 297

1. ... (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that, when such dispute has arisen prior to the entry into force of the present Convention, [then insert the desired treatment for past disputes] */ and provided further that, when such dispute has arisen after the entry into force of the present Convention, [then insert the desired treatment for future disputes]

C. In any model in which there is both a first and a final stage, there would also be an intermediate stage, i.e. the final stage would be preceded by further negotiations based on the first one. In a text this might be expressed by one of the following two phrases: [in the case of a first stage involving conciliation:] "if one party has rejected the recommendations of the report, or if further negotiations on the basis of the report do not result in an agreed delimitation within a period of _____ years [months] from date of that report"; [or, in the case of a binding first decision:] "if further negotiations on the basis of the decision on the basic question do not result in an agreed delimitation within a period of _____ years [months] from the date of that decision".

*/ This proviso would only be included if past disputes are not to be completely excepted from compulsory settlement.

D. At the intersessional meeting on 5 February 1979, further proposals were made, which might be added to all (or some of) the models presented in this working paper. Some of these proposals are reproduced below; they have been adapted to the style of this set of alternatives.

1. Reference to settlement by mutual consent

After a conciliation commission has tendered a report on the specific circumstances, principles or methods which should be considered by the parties concerned in resolving a sea boundary dispute, the parties shall negotiate the delimitation of the boundary on the basis of that report. If these negotiations do not result in an agreed delimitation within a period of _____ months [years] from the date of the conciliation commission's report, the parties to the dispute shall, by mutual consent, submit the question of delimitation to the procedures provided for in Section 2 of Part XV, unless the parties otherwise agree.

(This suggestion is adapted from the Bulgarian proposal, contained in NG7/5.)

2. Mixed disputes involving both sea boundaries and land claims

In addition to subparagraph (1) (a) of article 297, there might be a subparagraph (1) (bis) which has been adapted from the last clause of ICNT 297 (1) (a). It would read as follows:

(a)(bis) Disputes concerning sea boundary delimitations between States with opposite or adjacent coasts, which necessarily involve a concurrent determination of any previously established conflicting claims to sovereignty over, or other rights with respect to, any continental or insular land territory.

3. Jurisdiction over the question when a dispute arose.

If there is a disagreement between the parties to a dispute with respect to the question whether the dispute has arisen before or after the entry into force, as between these parties, of the present Convention, the commission, court or tribunal to which the dispute has been referred in accordance with article 297(1)(a) shall decide this question.

(This suggestion is adapted from Ambassador Rosenne's "very informal working paper" presented on 5 February, 1979.)

4. Continuance of prior arrangements.

The provisions of Article 297(1)(a) shall not apply to any sea boundary dispute finally settled by an arrangement between all the parties to the dispute, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon these parties.

(This suggestion is adapted from article 6 of the Bogota Pact of 30 April 1948.)

II. Possible combinations

A. There are some forty-five possible combinations of the five main options:

	Past Disputes	Future Disputes
1.	0	0
2.	0	C.1
3.	0	C.1 and C.2
4.	0	C.2
5.	0	BS.1
6.	0	BS.1 and C.2
7.	0	C.1 and BS.2
8.	0	BS.1 and BS.2
9.	0	BS.2
10.	C.1	C.1
11.	C.1	C.1 and C.2
12.	C.1	C.2
13.	C.1	BS.1
14.	C.1	BS.1 and C.2
15.	C.1	C.1 and BS.2
16.	C.1	BS.1 and BS.2
17.	C.1	BS.2
18.	C.1 and C.2	C.1 and C.2
19.	C.1 and C.2	C.2
20.	C.1 and C.2	BS.1
21.	C.1 and C.2	BS.1 and C.2
22.	C.1 and C.2	C.1 and BS.2
23.	C.1 and C.2	BS.1 and BS.2
24.	C.1 and C.2	BS.2
25.	C.2	C.2
26.	C.2	BS.1
27.	C.2	BS.1 and C.2
28.	C.2	C.1 and BS.2
29.	C.2	BS.1 and BS.2
30.	C.2	BS.2
31.	BS.1	BS.1
32.	BS.1	BS.1 and C.2
33.	BS.1	C.1 and BS.2
34.	BS.1	BS.1 and BS.2
35.	BS.1	BS.2
36.	BS.1 and C.2	BS.1 and C.2
37.	BS.1 and C.2	C.1 and BS.2
38.	BS.1 and C.2	BS.1 and BS.2
39.	BS.1 and C.2	BS.2
40.	C.1 and BS.2	C.1 and BS.2
41.	C.1 and BS.2	BS.1 and BS.2
42.	C.1 and BS.2	BS.2
43.	BS.1 and BS.2	BS.1 and BS.2
44.	BS.1 and BS.2	BS.2
45.	BS.2	BS.2

Explanations

0. Complete exception of this category of disputes.

C.1. Conciliation relating to any basic questions with respect to the specific circumstances, principles or methods which should be considered in resolving the issue in dispute.

C.2 Conciliation relating to the final delimitation.

BS.1 Binding third-party settlement relating to any basic questions with respect to the specific circumstances, principles or methods which shall be considered in resolving the issue in dispute.

BS.2 Binding third-party settlement relating to the final delimitation.

B. This table can be spelled out in the following manner:

1. Complete exception of all sea boundary disputes from any compulsory third-party procedure.

2. Complete exception of past disputes from any compulsory third-party procedures; compulsory conciliation, in the case of future disputes, of basic questions

concerning specific circumstances, principles and methods to be considered in resolving the dispute.

3. Complete exception of past disputes from any compulsory third-party procedure; compulsory conciliation, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation.

4. Complete exception of past disputes from any compulsory third-party procedure; compulsory conciliation of all future disputes.

5. Complete exception of past disputes from any compulsory third-party procedure; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

6. Complete exception of past disputes from any compulsory third-party procedure; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation.

7. Complete exception of past disputes from any compulsory third-party procedure; compulsory conciliation, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

8. Complete exception of past disputes from any compulsory third-party procedure; compulsory and binding settlement in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation.

9. Complete exception of past disputes from any compulsory third-party procedure; compulsory and binding settlement of all future disputes.

10. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

11. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, in the case of future

disputes, and following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation.

12. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory conciliation of all future disputes.

13. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

14. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation.

15. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, in the case of future disputes, and following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

16. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory and binding settlement, in the case of further disputes, of preliminary questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, in the case of future disputes, and following a further period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation.

17. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory and binding settlement of all future disputes.

18. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation.

19. Compulsory conciliation, in the case of past disputes of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation; compulsory conciliation of all future disputes.

20. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

21. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation.

22. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation in the case of past disputes, and, in the case of future disputes, compulsory and binding settlement relating to the final delimitation.

23. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiation based on this decision, compulsory and binding settlement relating to the final delimitation.

24. Compulsory conciliation, in the case of past disputes of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory conciliation relating to the final delimitation; compulsory and binding settlement of all future disputes.

25. Compulsory conciliation of all disputes.

26. Compulsory conciliation of all past disputes; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

27. Compulsory conciliation of all past disputes; compulsory and binding settlement in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final determination.

28. Compulsory conciliation of all past disputes; compulsory conciliation, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

29. Compulsory conciliation of all past disputes; compulsory and binding settlement, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation.

30. Compulsory conciliation of all past disputes; compulsory and binding settlement of all future disputes.

31. Compulsory and binding settlement, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute.

32. Compulsory and binding settlement, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, in the case of future disputes and following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation.

33. Compulsory and binding settlement, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory conciliation, in the case of future disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

34. Compulsory and binding settlement, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, in the case of future disputes, and following a further period of negotiations based on this

decision, compulsory and binding settlement relating to the final delimitation.

35. Compulsory and binding settlement, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute; compulsory and binding settlement of all future disputes.

36. Compulsory and binding settlement, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation.

37. Compulsory and binding settlement, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation; compulsory conciliation, in the case of future disputes, of preliminary questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

38. Compulsory and binding settlement, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation in the case of past disputes, and, in the case of future disputes, compulsory and binding settlement relating to the final delimitation.

39. Compulsory and binding settlement, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory conciliation relating to the final delimitation; compulsory and binding settlement of all future disputes.

40. Compulsory conciliation, in all disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation.

41. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of

negotiations based on this conciliation report, compulsory and binding settlement relating to the final delimitation; compulsory and binding settlement, in the case of future disputes, of basic questions concerning circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation.

42. Compulsory conciliation, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this conciliation report, compulsory and binding settlement relating to final delimitation; compulsory and binding settlement of all future disputes.

43. Compulsory and binding settlement, in all disputes, of basic questions concerning circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation.

44. Compulsory and binding settlement, in the case of past disputes, of basic questions concerning specific circumstances, principles and methods to be considered in resolving the dispute plus, following a further period of negotiations based on this decision, compulsory and binding settlement relating to the final delimitation; compulsory and binding settlement of all future disputes.

45. Compulsory and binding settlement of all disputes.

DISPUTE SETTLEMENT GROUP

DSG/2nd Session/No. 1/Rev. 5
1 May 1975

CHAPTER ___. SETTLEMENT OF DISPUTES

ARTICLE 1*/

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of this Convention through the peaceful means indicated in Article 33 of the Charter of the United Nations.

ARTICLE 2

Nothing in this Chapter shall impair the right of the Contracting Parties to agree at any time to settle a dispute between them which relates to the interpretation or application of this Convention by any peaceful means of their own choice.

ARTICLE 3

If the Contracting Parties which are parties to a dispute relating to the interpretation or application of this Convention have accepted, through a general, regional or special agreement, or some other instruments, an obligation to resort to arbitration or judicial settlement, any party to the dispute may refer it to arbitration or judicial settlement in accordance with such agreement or instruments in place of the procedure specified in this Chapter, unless the parties agree otherwise.

ARTICLE 4

1. If a dispute arises between two or more Contracting Parties with respect to the interpretation or application of this Convention, those Parties shall proceed expeditiously to exchange views regarding settlement of the dispute.

2. Similarly, such an exchange of views shall be held whenever a procedure under this Convention, or another procedure chosen by the parties, has been terminated without a settlement of the dispute.

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*/ The Working Group recommends that the Conference consider the desirability of including the following phrase in the preamble to the Convention: "Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations ..."

ANNEX I

ARTICLE 5

If the Contracting Parties which are parties to a dispute have agreed to settle a dispute by a peaceful means of their own choice and have agreed on a time limit for such proceedings, the procedure specified in this Chapter shall apply only after the expiration of that time limit, provided that no settlement has been reached and the agreement between the parties does not preclude any further procedure.

ARTICLE 6

Where a chapter of this Convention provides a special procedure for settling all or some disputes relating to the interpretation or application of that chapter, the procedure specified in this Chapter shall apply only after that special procedure has been concluded, provided that no settlement has been reached and the relevant chapter does not preclude any further procedure.

ARTICLE 7

1. Where no special procedure is provided for in other chapters of this Convention, any Contracting Party which is party to a dispute relating to the interpretation or application of this Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with Annex IA.

2. If the other party accepts this invitation, the conciliation procedure shall proceed in accordance with Annex IA, subject to paragraph 3 below.

3. If a party to the dispute does not accept the invitation, or after accepting the invitation refuses to appoint its members of the conciliation commission or the chairman thereof, the party which has initiated the proceedings may terminate the proceedings by notifying the other party or parties to the dispute to this effect.

4. If the conciliation procedure is terminated in accordance with the preceding paragraph, or if the dispute is not settled by conciliation, either party to the dispute may resort to the procedure specified in this Chapter.

ARTICLE 8

1. Subject to the preceding provisions of this Chapter, any dispute relating to the interpretation or application of this Convention which has not been settled in accordance with those provisions shall be settled in accordance with the provisions of Articles 9 and 10 of this Chapter. Any such dispute may be submitted to the tribunal having jurisdiction under these Articles by application of any party to the dispute.

ARTICLE 9

1. In disputes relating to the interpretation or application of this Convention, the following tribunals shall have jurisdiction to the extent and in the manner provided for in this Chapter:

a. An arbitral tribunal constituted in accordance with Annex IB.

b. The Law of the Sea Tribunal constituted in accordance with Annex IC.

c. The International Court of Justice.

2. The jurisdiction of these tribunals with respect to a Contracting Party shall be determined in accordance with the following provisions:

a. A Contracting Party, when ratifying this Convention, or otherwise expressing its consent to be bound by this Convention, shall make a declaration that it accepts with respect to decisions to be made in accordance with Article 10 of this Chapter the jurisdiction of an arbitral tribunal, or the Law of the Sea Tribunal or the International Court of Justice, or any two or three of them.

b. If a Contracting Party has not made such a declaration, it shall be subject to the jurisdiction of [an arbitral tribunal] [the Law of the Sea Tribunal].

c. A Contracting Party may also make or change a declaration at any time after it becomes bound by this Convention. Any such declaration or change shall not affect any proceeding already pending before a tribunal having jurisdiction under this Article.

d. Unless the parties agree otherwise, any case against a Contracting Party can be submitted only to the tribunal the jurisdiction of which has been accepted by that Party at the time the proceedings are being instituted.

ARTICLE 10

1. Subject to provisions of Articles 1 to 9 of this Chapter, the tribunal which has jurisdiction over a Contracting Party under Article 9 shall be entitled to exercise its jurisdiction in the following instances:

a. Primary jurisdiction over any dispute between Contracting Parties relating to the interpretation or application of this Convention for which no special procedure has been provided in another chapter of this Convention and in which no resort has been made to conciliation procedure under Article 7 of this Chapter.

b. Secondary jurisdiction over any dispute between Contracting Parties relating to the interpretation or application of this Convention which has not been settled by conciliation procedure under Article 7 of this Chapter or to a special procedure provided for in another chapter of this Convention unless that chapter expressly excludes further procedure under this Chapter.

c. Appellate jurisdiction, limited to cases specified in paragraph 4 of this Article, over any dispute between Contracting Parties relating to the interpretation

or application of this Convention in which a binding decision has been rendered as a result of resort to a special procedure provided for in another chapter of this Convention and in which an appellate procedure is not expressly excluded.

d. Special jurisdiction over any dispute arising under a clause in this Convention, in the rules or regulations enacted thereunder, or in an agreement or arrangement concluded pursuant to this Convention or related to the purposes of this Convention, which expressly provides that a particular category of disputes be settled in accordance with the procedure specified in this Chapter.

2. The jurisdiction under paragraph 1 (a) of this Article may not be exercised:

a. if another chapter of this Convention expressly excludes such jurisdiction with respect to any dispute relating to that chapter; or

b. if another chapter of this Convention provides that any dispute relating to that chapter shall be dealt with in accordance with a specified annex to this Chapter.

3. In any case submitted under paragraph 1 (b) of this Article, the findings of fact made in accordance with a special procedure provided for in another chapter of this Convention shall be considered conclusive unless one of the parties presents positive proof that a gross error has been committed.

4. The jurisdiction under paragraph 1 (c) of this Article may be exercised only when one of the parties to the dispute presents a claim that the decision rendered under another chapter of this Convention was invalid because of:

a. lack of jurisdiction;

b. infringement of basic procedural rules;

c. abuse or misuse of power; or

d. gross violation of this Convention.

5. A claim under paragraph 4 of this Article must be submitted within three months from the date of the contested decision.

ARTICLE 11

1. When dealing with a dispute relating to chapters _____ of this Convention, the tribunal having jurisdiction under Articles 9 and 10 of this Chapter may, at the request of one or more of the parties or on its own initiative, either

a. refer any scientific or technical matters to a committee of experts chosen from the list of qualified persons prepared in accordance with Annex _____; or

b. select four technical assessors from the list mentioned in the preceding subparagraph, who shall sit with the tribunal throughout all the stages of the proceedings, but without the right to vote.

2. In a case referred to a committee of experts under subparagraph 1 (a) of this Article, if the dispute is not settled on the basis of the committee's opinion, either

party to the dispute may request that the tribunal proceed to consider the other aspects of the dispute, taking into consideration the findings of the committee and other pertinent information.

ARTICLE 12

1. Upon the request of any Contracting Party which is a party to a dispute, the tribunal to which a dispute has been submitted under Article 9 shall have the power to prescribe, if it considers that circumstances so require and after giving the parties to the dispute an opportunity to be heard, such provisional measures, consistent with the main purposes and basic principles of this Convention, as it considers appropriate for the preservation of the respective rights of the parties and for minimizing damage to any party pending final adjudication.

2. If in the course of a dispute settlement procedure commenced under this Convention an additional dispute shall arise between two or more Contracting Parties as to the need for provisional measures to preserve the respective rights of the parties to such a procedure, or as to the content or extent of such measures, and if the organ to which the main dispute has been submitted has not yet been constituted or does not have the power to prescribe such measures, the _____ shall have jurisdiction to prescribe such measures. These measures shall remain in force until an organ dealing with the merits of the dispute, and having the power to prescribe provisional measures, decides otherwise.

3. Notice of any provisional measures prescribed under this Article shall be given forthwith to the parties to the dispute and to all Contracting Parties.

4. Any provisional measures prescribed under this Article or an annex to this Chapter shall be binding upon the parties to the dispute. In any case in which the International Court of Justice has jurisdiction under Article 9 of this Chapter, any provisional measures indicated by that Court shall be binding on the parties to the dispute.

ARTICLE 13

1. The tribunals specified in Article 9 of this chapter, shall be open to the Contracting Parties.

2. The conditions under which these tribunals shall be open to other States, to territories participating as observers in the Third Law of the Sea Conference, to international intergovernmental organizations and, whenever so provided in this Convention, to natural and juridical persons, shall be laid down by the Contracting Parties at a meeting to be held as soon as possible after coming into force of this Convention.

3. The provisions of this Article shall be without prejudice to the access, specified in this Convention, to any special procedure provided for in other chapters of this Convention.

4. The relevant provisions of paragraph 2 of this Article shall not apply to the International Court of Justice as long as that court is not open to entities other than States.

ARTICLE 14

1. In the case of a dispute between two or more Contracting Parties relating to the exercise by a coastal State of its enforcement jurisdiction in accordance with this Convention, or relating to its exercise of jurisdiction over resources in the economic zone, a Contracting Party shall not be entitled to submit a dispute to the procedure specified in Articles 9 and 10 of this chapter, if local remedies have not been previously exhausted as required by international law.

2. In any other dispute relating to the interpretation and application of this Convention, a Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to the jurisdiction of the tribunal under Articles 9 and 10 of this Chapter solely on the ground that local remedies have not been exhausted as required under international law.

ARTICLE 15 */

1. In case of the detention by the authorities of a Contracting Party of a vessel flying the flag of another Contracting Party, or of its crew or passengers, in connection with a violation of this Convention, the owner or operator of the vessel, or a member of the crew or a passenger of the vessel, shall have the right to bring the question of detention before the Law of the Sea Tribunal in order to secure prompt release of the vessel or of its crew or passengers in accordance with the applicable provisions of this Convention, including the presentation of a bond, and without prejudice to the merits of any case against the vessel, or its crew or passengers.

2. The Statute of the Law of the Sea Tribunal shall provide for an accelerated procedure to deal with cases under the preceding paragraph.

3. The decision of the Tribunal that the vessel, or its crew or passengers, be released shall be promptly complied with by the authorities of the Contracting Party concerned.

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*/ This article may be later located in some other chapter or chapters of this Convention.

ARTICLE 16

1. In any dispute submitted to the tribunal having jurisdiction under Articles 9 and 10 of this Chapter, the tribunal shall apply the law of this Convention and any other applicable law.

2. In any such dispute the tribunal shall ensure that the rule of law is observed in the interpretation and application of this Convention.

3. The provisions of this Chapter shall not prejudice the right of the parties to the dispute to agree that the dispute be settled ex acquo et bono.

ARTICLE 17 */

1. When ratifying this Convention, or otherwise expressing its consent to be bound by it, a State may declare that, with respect to any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction under this Convention, it limits its acceptance of some of the dispute settlement procedures specified in this Convention to those situations in which it is claimed that a coastal State has violated its obligations under this Convention by:

(a) interfering with the freedoms of navigation or overflight or of the laying of submarine cables or pipelines, or related rights and duties of other States;

(b) failing to have due regard to other rights and duties of other States under this Convention;

(c) not applying international standards or criteria established by this Convention or in accordance therewith; or

(d) abusing or misusing the rights conferred upon it by this Convention (abus ou detournement de pouvoir) to the disadvantage of another Contracting Party.

2. If one of the parties to a dispute has made such a declaration and if the parties to a dispute are not in agreement as to whether the dispute involves a violation of this Convention specified in the preceding paragraph, this preliminary question shall be submitted to decision by the tribunal having jurisdiction under Articles 9 and 10 of this Convention.

3. Whether or not it has made a declaration under paragraph 1 of this Article, a State may declare, when ratifying this Convention, or otherwise expressing its consent to be bound by it, that it does not accept some [or all] of the procedures for the settlement of disputes specified in this Convention with respect to one or more of the following categories of disputes:

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*/ The precise drafting and implications of this Article, in particular of paragraph 3 (a), will require further examination in the light of the substantive provisions of this Convention.

(a) Disputes arising out of the exercise of discretionary rights by a coastal state pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.

(b) Disputes concerning sea boundary delimitations between adjacent States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third-party procedure, [whether or not] entailing a binding decision, which it accepts for the settlement of these disputes.

(c) Disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, but law enforcement activities pursuant to this Convention shall not be considered military activities.

(d) Disputes or situations in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council has determined that specified proceedings under this Convention would not interfere with the exercise of such functions in a particular case.

(e) .....

(f) .....

4. A Contracting Party, which has made a declaration under paragraphs 1 or 3 of this Article, may at any time withdraw all or part of its exceptions.

5. If one of the Contracting Parties has made a declaration under paragraphs 1 or 3 of this Article, any other Contracting Party may enforce the same exception in regard to the Party which made the declaration.

ANNEX IA. CONCILIATION

1. Any reference of a dispute to the conciliation procedure provided for in this Annex shall be subject to the provisions of Article 7 of Chapter _____ of this Convention.

2. A list of conciliators shall be drawn up and maintained by the _____. To this end, every Contracting Party shall nominate four conciliators, each of whom shall be a person enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

3. Whenever a dispute is referred to conciliation under Article 7 of Chapter _____ of this Convention, the party or parties initiating this procedure shall notify the

DISPUTE SETTLEMENT GROUP SD/3, 6 August 1980

Note by the President on Conciliation Provisions in Part XV on the Settlement of Disputes

At a meeting of the Informal Plenary on 27 March 1980 during the first part of the ninth session, the delegation of Argentina raised the question of compulsory submission to conciliation and the need to make such changes as may be necessary in Part XV. The Argentine proposal was further elaborated in a written statement by that delegation (A/CONF.62/WS/5 dated 2 April 1980).

The President, in his report on the work of the Informal Plenary on Settlement of Disputes during that session (A/CONF.62/L.52 and Corr.1 (Arabic and English only)) and the supplementary report (L.52/Add.1), pointed out that the question merited further consideration and should be the subject of consultations, and that it would be taken up at the commencement of the resumed ninth session. Accordingly, the President proposes that the Informal Plenary now address itself to this and the related questions.

Part XV, like the rest of the Informal Composite Negotiating Text/Revision 2 has been the product of long and intensive negotiations and incorporates compromises that have been carefully formulated. Precisely for that reason, it provides a complex interrelationship between its sections and between its articles. The examination of the text must be on the clear understanding that the substance of the text should not be affected. On this understanding, it still seems necessary to examine the structure of the text in Part XV merely for the purpose of rationalizing its presentation. This examination should be confined to Part XV and the relevant annexes, and to the issues raised by the emergence of the principle of compulsory submission to conciliation procedure.

The present text of A/CONF.62/WP.10/Rev.2 provides for two types of conciliation procedure. One is voluntary while the other obliges submission to conciliation. For the purpose of clarity, it is advisable to incorporate a special provision for compulsory submission to conciliation, which can be effected at an appropriate place in the text. In doing so, it is also advisable to divide the text into three sections dealing with the voluntary procedures, the compulsory procedures entailing a binding decision, and the exceptions to, or exclusions from, the compulsory procedures. The effect of the exceptions and exclusions from such compulsory procedures is tempered in certain cases by providing for a compulsory procedure which does not result in a binding decision.

In light of these considerations, the concepts referred to may be elaborated as follows:

(A) Structure of Part XV

Part XV can appropriately be divided into three sections:

(i) the first section providing for the voluntary procedures would remain unchanged as found in Section 1, articles 279-295 of A/CONF.62/WP.10/Rev.2;

(ii) the second section would provide for the compulsory and binding dispute settlement procedures articles 286-295 of A/CONF.62/WP.10/Rev.2 which set out this compulsory jurisdiction and which should remain intact as new Section 2;

(iii) the third section would consist of articles 296 and 298 which deal with limitations and optional exceptions to the binding procedures of the second section, and also article 297 on the preliminary procedures. This should be the new Section 3 and would include those disputes in respect of which compulsory submission to conciliation procedures applies.

Such a structure for Part XV would appear to be eminently suitable and it would not in any way affect the substance of the text.

(B) Compulsory submission to conciliation procedure

The Informal Composite Negotiating Text in its second revision incorporates provisions for compulsory submission to conciliation procedure

(i) with respect to certain disputes relating to fisheries in the exclusive economic zone (article 296, paragraph 3);

(ii) with respect to certain disputes relating to marine scientific research (article 296, paragraph 2); and

(iii) with respect to certain disputes relating to the delimitation of maritime boundaries between States with adjacent or opposite coasts (article 298, paragraph 1 (a)).

In all these cases the drafting device used in the text to provide for compulsory submission to conciliation is the reference to the voluntary conciliation procedure in article 284 and the exclusion of the operation of paragraph 3 of that article. Thus, a party against which the conciliation procedure has been instituted may not terminate the proceedings. This is a circuitous and confusing manner of dealing with this question, and it seems most appropriate to have a special provision covering compulsory submission to conciliation. This could be effected either by the inclusion of a separate article or by dividing the conciliation annex (Annex V) into two parts, with the first part consisting of the existing Annex V and the second part providing for a compulsory procedure.

In addressing these questions, it must be stressed once more that any changes to be made should not be such as would affect the substance of Part XV. Accordingly, the attached extracts from A/CONF.62/WP.10/Rev.2 incorporate some textual changes to Part XV and Annex V which are suggested in order to give effect to principles outlined above.

Annex 85

Minute dated 19 January 1982 from [name redacted], East African Department, UK Foreign and Commonwealth Office to Mr. Berman, Legal Advisers, "BIOT Maritime Zones"

Reference (5)

JEE 044/1

20 JAN 1982

WH

Mr Berman, Legal Advisers

[redacted], MAED

BIOT MARITIME ZONES

1. Your minute of 12 January refers.

2. The BIOT contiguous zone is defined in the BIOT Fishery Limits Ordinance of 1971 as follows:

> 'contiguous zone' means the zone contiguous to the territorial sea of the Territory which was established as a fisheries zone for the Territory by Proclamation No 1 of 1969'.

This Proclamation defines the BIOT fisheries zone as follows:

> 'The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the BIOT and as its seaward boundary a line drawn so that each point on the line is 12 nautical miles from the nearest point on the low-waterline on the coast or other baseline from which the breadth of the territorial sea is measured'.

Since the BIOT territorial sea is 3 nautical miles wide, the contiguous zone - which is the same as the BIOT fisheries zone - is 9 nautical miles wide. So FCO tel no 150 should have referred to the 3 - 12 miles fisheries zone instead of 3 - 9 miles.

1984 JEE 044/1

3. My understanding, therefore, is that:

(a) BIOT has exclusive fishing rights over the territorial sea together with the contiguous zone (12 nautical miles limits); and

(b) The Mauritians have traditional fishing rights within the contiguous zone (3 - 12 nautical miles).

4. On reflection, I am not sure how to interpret para 13 of the 1976 Exchange of Notes. The first sentence is clear enough, but does the second sentence forbid fishing in the continental shelf and sea-bed around Diego Garcia over which we exercise sovereign rights? If so, what are the fishing limits around the island? Presumably they would extend far beyond 12 nautical miles and should be notified to the Japanese.

[redacted]
East African Department
K 301 233 8696

19 January 1982

Annex 86

Minute dated 13 July 1983 from [name redacted], East African Department, UK Foreign and Commonwealth Office to Mr. Watts, Deputy Legal Adviser, "BIOT: Fishing Ordinance"

[redacted]

Reference	
RECEIVED IN REGISTRY	23 SEP 1983
DESK OFF...	REGD. FILE
INDEX	PA

Mr Watts
Deputy Legal Adviser

BIOT: FISHING ORDINANCE

1. At a meeting on 23 September 1965 between the then Colonial Secretary (Mr Greenwood) and Sir Seewoosagur Ramgoolam, the Mauritius PM, the Colonial Secretary gave an oral and confidentia undertaking that the British Government would use their good offices with the US Government to ensure that certain facilities, including fishing rights, in the Chagos Archipelago would remain available to the Mauritius Government as far as possible.

A 2. In 1971 a Fishery Limits Ordinance was passed which provides that any fishing boat other than a fishing boat owned wholly by a resident in BIOT commits an offence if it fishes within the fishing limits established by the Ordinance. The only exemption is in respect of the continuance of fishing traditionally carried on in the fishing limits by foreign fishing boats: Sectio 4. It seems clear that this exemption was specifically framed with Mauritian boats in mind.

B 3. As you will see, however, from the attached 1980 minute from Research Department, it appears that no Order to officially designate Mauritians as tradtional fishermen under Section 4 was ever made and gazetted. Nonetheless, it seems clear that in the early 1970's the Commissioner had fully intended to use his powers under Section 4 of the Ordinance to enable Mauritian fishing boats to fish within the contiguous zone, viz the 3-9 mile zone, in the waters of the Chagos Archipelago (see letter C dated June 1971 from Williams in Seychelles, for example). Furthermore, the Mauritians were informed in 1971 that such an Order had been made and this has obviously remained their impression.

4. We would now like to regularise the position by making a designating Order. In practical terms, remedying this oversight will not make much difference - there has been little or no inshore fishing in the Chagos waters by Mauritian vessels - but it will remove a potential source of friction in our relations with Mauritius. One danger that we foresee, however, is that in passing such an Order, we may at the same time provide an opportunity for boats from (say) Japan or Korea to circumvent the restrictions of the 1971 Fishing Ordinance by registering their boats in Mauritius and thus gain access to the rich tuna fishing in the Chagos waters; is there any way the Ordinanc couldbe drafted to exclude this possibility?

D 5. We have informed the Americans of our intention and they foresee no difficulties. I have a first (very rough) shot at a designating Order; I would be grateful for your comments.

[redacted]
[redacted]
East African Department
233 4685 K301

13 July 1983

CODE 18-77
SS 8/78

cc [redacted] MAED

Annex 87

African Section Research Department, Detachment of the Chagos Archipelago: Negotiations with the Mauritians (1965), 15 July 1983

DETACHMENT OF THE CHAGOS ARCHIPELAGO: NEGOTIATIONS WITH THE MAURITIANS (1965)

Negotiations in Mauritius

1. A joint Anglo-US survey of a number of Indian Ocean islands with a view to their suitability for defence use was carried out from June to August 1964. The Premier of Mauritius, Dr Seewoosagu Ramgoolam, and the Executive Council of Seychelles, were consulted first, and raised no objection. An approach was also made to Dr Ramgoolam about the possibility of detaching the Chagos Archipelago from Mauritius, but his reaction to this was guarded.

2. The Governor of Mauritius was instructed on 19 July 1965 (CO Secret and personal telegram number 198) to open discussions with Mauritius Ministers on the detachment of Chagos and on compensation:

"In putting the matter to your unofficials you should indicat that as regards Diego Garcia there is a firm requirement for the establishment of a Communications Station and supporting facilitie including an airstrip. As regards the remainder of the islands (incl. the remainder of the Chagos Archipelago) you should indicate that the requirement for these is in the nature of an insurance for the future, that no firm plans exist for early defence developments on them but that it is possible that air and/or naval facilities may be required in future years.... "

He was further instructed that:

"You should explain that it would be intended that the island in question should be constitutionally separated from Mauritius and Seychelles and established, by Order in Council as a separate British Administration. The Americans would not be prepared to go ahead on any other basis. Any suggestion of the islands required being made available on the basis of either leases or defence agreements with Mauritius or Seychelles must therefore be ruled out."

3. On 23 July the Governor informed Ministers of what was proposed and found that whilst not ill-disposed to the idea of a defence facility in Chagos they asked for time to consider the idea further. Both Ramgoolam (Labour Party) and Gaetan Duval (of the Parti Mauricien Social Democrat - PMSD) expressed dislike of detachment and the Governor commented that it was clear that any attempt to detach without agreement would evoke strong protest Ramgoolam raised the question of mineral or other rights that might arise in the future and referred to the reversion of the islands to Mauritius if their use for defence purposes was abandoned. Ministers also mentioned the possibility of an increased US sugar quota for Mauritius but were told that this would raise difficult problems, and that HMG would favour the payment of lump sum compensation.

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4. A week later, the Council of Ministers, with Ramgoolam speaking for the Ministers as a whole, gave the Governor their response: they were sympathetically disposed to providing the Chagos Archipelago for Anglo-US use and prepared to play their part in the defence of the Commonwealth and the free world. They would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius. Ministers objected however to detachment, which would be unacceptable to public opinion in Mauritius. They asked therefore that consideration might be given to how UK/US requirements might be reconciled with a long term lease, eg for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius. As regards compensation, they suggested that the United States might purchase annually from Mauritius 300,000 to 400,000 tons of sugar at the Commonwealth negotiated price against the purchase by Mauritius from the United States of 75,000 tons of rice and 50,000 tons of wheat; an American market for up to 20,000 tons of frozen tuna would also be of interest. The United States might also be helpful about immigration. In addition there should be a capital sum towards development. They also hoped that some use might be made of Mauritius labour in construction work. Ramgoolam suggested discussions with representatives of the British and American Governments either on the occasion of, or before, the Constitutional Conference to be held in London in September.

5. Speaking on instructions, the Governor explained to the Mauritian Ministers on 13 August that the United States Government was firm that the islands chosen for the development of defence facilities must be made available directly by HMG and that a leasehold arrangement therefore would not do: if on reconsideratio Ministers were prepared to accept detachment, HMG would do their utmost in negotiations with the US Government to secure the various trade and other benefits requested, but Ministers were warned that chances of success were limited by the fact that some of their suggestions involved difficult issues of domestic politics in the US (eg the sugar quota, which was controlled by Congress). The Governor invited them to discuss other elements of compensation within the direct power of HMG to grant. The Ministers responded by renewing their call for discussion in London between representatives of the Governments concerned, and both Ramgoolam and Duval said that they were sure that agreement could be reached in this way.

Negotiations in London

6. The Defence and Overseas Policy Committee (OPD) considered the detachment of the Chagos islands and also a defence agreement with an independent Mauritius, on 31 August 1965. (Independence for Mauritius appears to have been the constitutional solution at the forefront of Ministerial thinking here, although the final decision between a referendum on independence and some form of special association with Britain - claimed by the PMSD - and for

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elections followed by full independence - claimed by the Labour Party - rested with the Mauritius Constitutional Conference due to take place in September.*) The Deputy Secretary of State for Defence, supported by the Foreign Secretary, Mr Stewart, urged that "The Agreement of the Mauritius Ministers to the transfer should be obtained if possible but in any event the decision to detach the islands should be taken before the end of the Mauritius Constitutional Conference. In response to the request of Mauritius Ministers we might accept responsibility for the external defence of Mauritius, but there was strong objection to our similarly accepting a continued responsibility for internal security after Mauritius became independent, since this might embroil us with opposing racial groups on the Island. If agreement on the detachment of the Chagos group could not be obtained, we should nevertheless transfer them to direct United Kingdom sovereignty by Order in Council." The Colonial Secretary, Mr Greenwood, said however that he "was not in agrement with these proposals. The Mauritius Constitutional Conference would in any case be difficult. When the Committee had last discussed detaching the islands, they had agreed that the proposed compensation should be increased and that the agreement of the Mauritius Government was essential. Their Ministers would be very disappointed at our not agreeing to accept a 99 year lease and also if the United States did not accept their proposals on sugar. The offer to accept responsibility for their external defence would be useful in negotiations. However, our acceptance of responsibility for internal defence would be the main issue. Minority guarantees would be a most important part of the Conference and could probably only be satisfactorily resolved by an assurance that we would provide forces for internal security at the request of the Mauritius Government. At least we should therefore agree that a request from the Mauritius Government after independence for assistance in internal security would be sympathetically considered. Mauritius Ministers would, on this basis, probably accept the detachment of the islands but to threaten to go ahead with this by Order in Council regardless of their agreement would undoubtedly wreck the Conference." Summing up the discussion, the Prime Minister (Mr Wilson) said "that at the forthcoming Conference we might if necessary agree to "consider sympathetically" the provision of United Kingdom forces for purposes of internal security at the request of the Mauritius Government after independence ..... A decision on whether or not we should detach the islands in question by Order

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* The main objects of the Conference were described in FO Guidance telno.401 as being: "to decide whether full independence or some form of special association with Britain should be the ultimate goal towards which Mauritius should move; to settle the timing of the transition to this goal and to decide what (if any) prior population consultation should be stipulated; and to secure the maximum possible measure of agreement between the Mauritian political parties on the provisions of the new Constitution."

in Council if the agreement of Mauritius Ministers could not be obtained to this course need not be taken at this stage, and until we could see how the forthcoming Conference progressed. It was, however, essential that our position on the detachment of the islands should in no way be prejudiced during its course and the Colonial Secretary should bring the matter back to the Committee in good time for a decision to be reached on this issue before the Conference reached any conclusion."

7. The Constitutional Conference took place in London from 7 - 24 September 1965. Completely separate side-meetings attended by the Colonial Secretary and Mauritian Ministers and Party leaders dealt with the question of the Chagos Archipelago. The records of the Constitution Conference and the records of the meetings on Chagos both show that there was no confusion between the issues discussed in the two fora, and no 'carry-over' of subject matter - except inasmuch as a possible Anglo-Mauritian Defence Agreement was mentioned in both.

8. As the Colonial Secretary's initial, exploratory, talk on Monday 13th September with Ramgoolam (now Sir Seewoosagur) revealed, the Mauritians had come to London with their sights still firmly fixed on a lease arrangement for Chagos and a trade agreement with the US. At a meeting immediately afterwards attended also by Koenig of the PMSD, Mohammed (Committee of Muslim Action - CAM), Bissoondoyal (Independent Forward Bloc - IFB), and Paturau, an Independent Minister, the Colonial Secretary stressed that the subject of their discussions was quite separate from that of the Conference proper. He pointed out the objections to the terms proposed by the Mauritians, (ie the lease, increased sugar quota and immigration to the US) and emphasised the link between the existence of defence facilities in the Chagos islands built by the US but available for joint UK-US use and Britain's ability to give defence help to Mauritius. Having, however, failed to shake Mauritian hopes of extracting some form of continuing advantageous financial deal with the Americans, Mr Greenwood undertook to arrange for them to meet with an appropriate official at the US Embassy in London. At the meeting, which took place on Wednesday, 15th September, Mr Armstrong (US Embassy Minister-Economics) did his best to persuade the Mauritian Ministers that there was no chance of the US increasing Mauritius' sugar or immigration quotas.

9. The Colonial Secretary reported to the OPD on Thursday 16th September that:

" ... he had discussed with the Mauritian leaders the detachment of the islands in the Chagos Archipelago. They were disappointed that the United States Government was not prepared to consider the lease of the islands or to meet their requests over sugar purchases and emigration. They had however had discussions with the United States Embassy and the latter had agreed to consider their suggestions as regards trade. They had also discussed with the Colonial Development Corporation the possibility of a land settlement scheme. It had been previously envisaged that we might offer a maximum of £3 million as

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compensation for the detachment of the islands. He had made an initial offer of £1 million and this had not been badly received. If it would help to secure agreement we might consider making available a further £1 million to finance development schemes over a period of years. We might also consider a provision that after, say, 99 years, the islands would revert to Mauritius if they were no longer required by the United Kingdom and United States. There had been some discussion about a continuing British responsibility for internal security, but this had been in the context of future constitutional development rather than of the detachment of the islands. Of the two main Mauritius Parties one favoured independence while the other preferred a form of association with the United Kingdom. Both would want some assurance of continued British assistance in maintaining internal security but it might not be necessary for us to go beyond an agreement to consult at the request of the Mauritius Government .... There had been no detailed discussion as yet about a defence agreement. The Constitutional Conference should end by the middle of the following week and he was hopeful that by then agreement on the detachment of the islands would have been secured. He had not pressed for an immediate decision both because this might prejudice agreement on the constitutional issues and because the Mauritian leaders were aware of the strength of their bargaining position and undue pressure might only induce them to put up their price."

In discussion it was pointed out that an urgent and satisfactory decision for the detachment of the islands was necessary both in HMG's own defence interests and in order to maintain good political and military relations with the US. Summing up, the Prime Minister said that the Committee would wish to take note of the Colonial Secretary's statement and to express the hope that agreement would be reached urgently, and in any case by the end of the Constitutional Conference. A decision on whether or not HMG should detach the islands in question by Order in Council if the agreement of Mauritius Ministers could not be obtained should still be deferred.

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10. The next meeting between the Colonial Secretary and Mauritius Ministers on the excision of the islands took place on Monday 20th September. Once again, Mr Greenwood emphasised his desire to keep the discussion of the proposal to establish defence facilities in the Mauritius dependencies separate from the Constitutional Conference. At this point all Ministers present (Ramgoolam, Koenig, Mohamed, Bissoondoyal and Paturau) were still pushing for a lease and some form of continuing aid from the Americans. Indeed, Ramgoolam told the Colonial Secretary that "the sort of compensation that had been suggested was of no real interest to the Mauritius Government. The United States was spending vast sums of money elsewhere in the world on bases that were not secure. Admittedly Diego Garcia was not being used at present; but in future it might be of great strategic significance. Mauritius must obtain some significant benefit from making it available. He did not pretend to know the military significance of Diego Garcia but, in considering compensation for Mauritius,

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the scale on which the United States has accepted expenditure on bases elsewhere had to be borne in mind." On this occasion Ramgoolam did, however, admit for the first time, in an oblique manner, of the possibility of the detachment of Chagos, whilst continuing to envisage some agreement with the Americans (" ... an alternative arrangement might be to calculate what benefit Mauritius would have derived from the sort of sugar quota and other trade arrangements that they had been suggesting and for the United States Government to make yearly payments to Mauritius of that amount .... He was talking in this connection in terms of a lease but if the islands were detached then different figures could easily be calculated;[it should in any case be provided that if the islands were detached then different figures could easily be calculated;] it should in any case be provided that if the islands ceased to be needed for defence purposes they would revert to Mauritius.")

11. Meanwhile, the Constitutional Conference was reaching deadlock on the issue of Mauritius' future status. At a meeting between the UK delegation and PMSD representatives on the morning of 23rd September it became clear to PMSD leader Koening that HMG were not going to accept his Party's proposal for a referendum on independence and he withdrew the Party from the Conference. This withdrawal was unconnected with the Chagos issue, but Koenig also stayed away from the meeting on the afternoon of 23 September at which Ministers gave agreement, in principle, to detachment (para.13) and later the PMSD used the pretext of inadequate compensation secured in the negotiations to withdraw from the all-party Government in Mauritius (para.17).

12. At 10 a.m. also on 23rd September the Prime Minister, Mr Wilson, held a private meeting with Ramgoolam. He emphasised that the question of the detachment of Chagos was a completely separate matter from the question of Mauritius' constitutional future. He warned that because of American interest, the Mauritians might be raising their bids too high and went on to say that: "On the Defence point, Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point."

13. At 2.30 p.m. on that afternoon the Colonial Secretary met Ramgoolam and other Ministers (minus Koenig) and a tentative agreement was reached. Early in the discussion the Colonial Secretary said: "This [ie compensation, the offer of a defence agreement etc] was the furthest the British Government could go. They were anxious to settle the matter by agreement but the other British Ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council."

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14. Some days after the meeting on 23rd September, and prior to departure overseas, the Secretary of State asked officials in the Colonial Office to get the final record of the meeting agreed with the Mauritian Ministers before they left London. One Minister (Paturau) had already left for Mauritius. Ramgoolam was due to visit the Colonial Office on 30th September, and the opportunity was taken to clear the minutes with him and see if he could clear the record with Mr Mohamed and Mr Bissandoyal. Ramgoolam took away the draft and after consulting Mr Mohamed wrote a letter dated 1st October agreeing the draft F record with certain amendments. On 4th October, Sir Hilton Poynton and Mr Trafford Smith saw Ramgoolam and Ringadoo to clear up various matters, including the final draft. Puzzled by Ramgoolam's reference to "two islands" in his letter of 1st October, they sought clarification from him. Trafford-Smith later minuted: "It turned out that the 'two islands' point was probably due to a misunderstanding - at least he did not press it, and I wonder whether, confronted with a map showing the islands in the Chagos group, he had in fact previously realised that there were so many."

As regards the other points, the two Ministers agreed to our revised presentation which effectively said that we would do our best to negotiate these facilities with the Americans."

15. The amendments were incorporated into the final agreed G record of the 23rd September meeting, the relevant paragraphs of which read:

"22. Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

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(vi) the British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

(a) Navigational and Meteorological facilities;

(b) Fishing Rights;

(c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius

(vii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. SIR S RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministeral colleagues.".

16. At the same time it had been agreed within the C.O. on the advice of the Governor (Sir John Rennie) that the right way to proceed was to send a secret despatch (in the non-personal series) which could be shown to the Mauritian Ministers asking for formal confirmation of the revised record as finally agreed by Sir S Ramgoolam and Mr Ringadoo, and effectively by Mr Mohamed, whose consent Ramgoolam had secured. This despatch was sent on 6th October (no.423).

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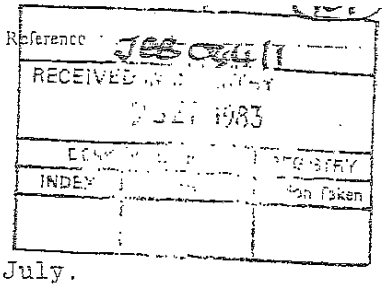
17. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5th November 1965. (The provisos mentioned above were acknowledged by CO secret telno.298 of 8th November, which made clear that the Chagos Archipelago would remain under British sovereignty, and that the islands were required for defence purposes, and that there was no intention of permitting prospecting on or near them). PMSD Ministers dissented however; Paturau (Independent) supported the agreement on defence grounds, but expressed sharp dissatisfacti with the amount of compensation. On 11 November Koenig, Duval and Devienne (PMSD) resigned from the Government. The following day they gave a press conference at which they gave as their reason for this action the inadequacy of compensation for the loss of Chagos and the insufficiency of efforts to improve it, especially in regard to sugar exports and immigration to the United States; however the PMSD also publicly declared that the Party had no objection in principle to detachment or to defence facilities.

African Section
Research Department
15 July 1983

Annex 88

Minute dated 5 August 1983 from Maritime, Aviation and Environment Department to East Africa Department, UK Foreign and Commonwealth Office, "BIOT: Fishing Ordinance"

[redacted], EAD



BIOT: FISHING ORDINANCE

1. Mr Whomersley's minute to you of 20 July.

2. On para. 3 I have consulted MAFF and it appears the central question for this is - was the undertaking with the Mauritians to give them exclusive fishing rights in the Chagos Archipelago? If so, and given that this is based on traditional fishing by local fishermen, it would be useful to try to limit the new Order so that it does not apply simply to any fishing vessel registered in Mauritius. Subject to Legal Advisers' views this could perhaps be done by

(a) specifying in section 2 of the Order that this designati requires owners and operators of fishing boats as defined in the Fisheries Limits Ordinance of 1971 to be inhabitants of or residents in Mauritius.

(b) (based on a Tristan da Cunha Ordinance) adding at the end of section 3 of the draft Order ''..... providing this is for local consumption or use.''

2. If we do not need to be seen to safeguard the interests of Mauritian fishermen as against e.g. French/Korean/Japanese, then we could wait and see if there were an abuse of the facility of Mauritian registration, (and MAFF thought that the Mauritians may wish to be able to strike deals with the French for tuna fishing in the area). It would then be possible to issue an amendment or further Order; UK succeeded last year in virtually eliminating access for Spanish fishermen who ran UK-registered vessels by specifying in a Bill that 75% of the crew including the Captain must be UK resident.

3. Assuming we are content with the amount and type of fishing done by the Mauritians there is no need to specify which products they can take, and this has not been done, as far as I can see, in other Dependent Territories' Ordinances.

4. Would it be useful to state in the new Order that the provisions contained in the 1969 Proclamation and 1971 Ordinance, notwithstanding the designation in accordance with Section 4 (i) of the Ordinance, still appear?

5. The reference to ''contiguous zone'' in section 3 of the draft is misleading (despite its appearance in 1971 Ordinance), and the expression may make UKs position ambiguous as we do not claim such a zone. It should be replaced by ''fisheries zone'' with the possible further definition ''..... which extends from the outer limit of the 3nmile territorial sea to 12 n miles as defined in section 2 of the Proclamation of 1969.'' Some of these suggested amendments are, as you will have spotted, mutually exclusive.

/6.

CODE 18-77

(6. On the right of innocent passage: I attach a copy of the relevant Article from the 1958 Territorial Sea Convention, and have checked with Legal Advisers that a vessel sailing towards the land with the intention of disembarking illegally does not enjoy the right.)

[redacted]
Maritime, Aviation and
Environment Department

5 August 1983

Annex 89

Note Verbale dated 10 February 1984 from Ministry of External Affairs, Tourism and Emigration, Mauritius to British High Commission, Port Louis, No. 6/84(1197/12)

No 6/84(1197/12)

10th February, 1984

The Ministry of External Affairs, Tourism, & Emigration presents its compliments to the British High Commission and has the honour to refer to the latter's Note No 003/84 of 17th January 1984 regarding the Constitution of Mauritius (Amendment No 2) Bill which was placed before the Legislative Assembly on 16th December 1983 by the Government of Mauritius.

The Ministry wishes to inform the High Commission that the Mauritius Government has made its position abundantly clear on the issue of sovereignty over the 'Chagos Archipelago'. The British Prime Minister, Mrs Margaret Thatcher, and the Mauritius Prime Minister, Hon. Anerood Jugnauth, have 'agreed to disagree' on this issue.

The Ministry of External Affairs, Tourism, & Emigration avails itself of this opportunity to renew to the British High Commission the assurance of its highest consideration.

Ministry of External Affairs, Tourism & Emigration ★ Mauritius

The British High Commission
Fifth and Sixth Floors
Cerne House
Chaussee
Port Louis

Copy (with copy of Note under reference) to:
Permanent Secretary, Prime Minister's Office
Attorney-General's Office

Annex 90

"British Indian Ocean Territory" Notice No. 7 of 1985, 21 February 1985

BRITISH INDIAN OCEAN TERRITORY

Official Gazette

VOL XVII

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February 1985

The following notices are published by order of the Commissioner for general information:

No 7 of 1985.

DESIGNATION OF MAURITIUS UNDER SECTION 4 OF THE FISHERY LIMITS ORDINANCE, 1984.

In exercise of the power vested in him by Section 4 of the Fishery Limits Ordinance, 1984, the Commissioner has been pleased to designate Mauritius for the purpose of enabling fishing traditionally carried on in areas within the fishery limits to be continued by fishing boats registered in Mauritius.

F/A 25,

Gazette Notice No 7 of 1985

ORDER DESIGNATING MAURITIUS UNDER
SECTION 4 OF THE FISHERY LIMITS ORDINANCE 1984

In exercise of the power vested in me by section 4 of the Fishery Limits Ordinance, 1984, I hereby designate Mauritius for the purpose of enabling fishing traditionally carried on in areas within the fishery limits to be continued by fishing boats registered in Mauritius.

Dated this 21st day of February 1985.

Commissioner