

# **Third United Nations Conference on the Law of the Sea**

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## **38<sup>th</sup> meeting of the First Committee**

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# FIRST COMMITTEE

## 38th meeting

Wednesday, 25 May 1977, at 11.45 a.m.

*Chairman:* Mr. P. B. ENGO (United Republic of Cameroon).

### Organization of work

1. The CHAIRMAN said that the Committee should concentrate on reaching agreement on a number of basic elements which could complete the over-all package deal, namely, the problems of exploitation, the institutional questions and the dispute settlement system.

2. With respect to exploitation, he noted an increasing interest in the possibility of an exploitation system in stages. There was a need to generate funds to acquire technology and working experience, and to achieve the major objective of enabling mankind as a whole to exploit the resources of the area. Those requirements made it imperative that the Authority should be able to commence exploitation as soon as possible, whatever system was devised. The technology required for the exploitation of deep sea-beds existed, but means had to be developed to make it available, through the Authority and its subsidiary organs, for the benefit of mankind in general. The basic objectives must be defined so as to ensure that the main purposes of the Authority, as set out in the convention, were not defeated, no matter what system was adopted. He himself was convinced that, if the system worked effectively in the initial stage, now being fixed at 20 to 25 years, there might be no need for a review conference. A review clause might be useful as a safety valve, but processes of adjustment might well be set in motion for mutual interest as time went on.

3. With respect to the negotiating effort, he noted that informal consultations held during the intersessional period had highlighted the importance of basic issues related to the tenure of contract concluded during the period of 20 to 25 years, and the mandate and the decision-making processes of the review conference. In his view, the application of the initial exploitation system must be considered together with the conditions of exploration and exploitation and the viability of the Enterprise. Many of the basic problems arose from differing conceptions of the exploitation system, and efforts should now be focused on determining the conditions of exploitation and the financial means most appropriate for the initial system. That would not only save time but would also avoid prejudging what means were more appropriate for the future system. With respect to conditions of exploitation, it was necessary to determine the qualifications and the methods of selection of applicants and the rights and obligations of the contractor. Items of fact must be clearly distinguished from those which were subject to negotiation. It was also necessary to stipulate clearly the precise data required in connexion with an application. With respect to the question of financial arrangements with

the contractor, he noted that a number of useful ideas would be found in the report on the costs of the Authority and contractual means of financing its activities, which had been prepared by the Secretary-General in response to the Committee's request and which had just been issued (A/CONF.62/C.1/L.19).

4. The commercial viability of the Enterprise could not be separated from the system of exploitation, and the search for feasible financial means for the Enterprise must be continued. Different means might be appropriate at different stages, however, and he therefore urged that every effort be made to avoid too much detail, which might prove unrealistic in the future.

5. He suggested that serious consideration should be given to the kind of joint-venture arrangement which had been suggested at the previous session, together with the so-called "banking system", since it might provide a practical means for dealing with the financial and technological aspects of the problem for an initial system.

6. In order to be commercially viable, the Enterprise also required an expeditious decision-making process, the authority to recruit competent technical staff, the capability of implementing decisions, and a qualified operations "manager" with the power to ensure efficient operation. The Committee should consider whether the present statute adequately met those requirements.

7. As for the controversial issue of resource policies, he felt that the essential elements had already been included in article 9 of part I of the revised single negotiating text<sup>1</sup> and that it would be difficult to make any further improvement without reaching a compromise in other areas of disagreement.

8. With respect to the disputed matter of institutional arrangements, ways should be explored to combine functions within the Authority in the interests of economy. It should be borne in mind that no income could be expected from sea-bed exploitation in the initial years, and that other sources of financing would have to be found.

9. The decision-making processes of the Assembly should also be examined. It had been suggested that the procedure under article 25 might be used in such a way as to paralyse the Assembly. If that was the case, it would have to be modified and alternative measures would have to be found.

10. The powers and functions of the Assembly and the Council should also be examined, with a view to main-

<sup>1</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.8/Rev.1.

taining a proper balance. The non-interference provision in article 24, paragraph 4, guaranteed the Council's independence, and it was therefore extremely important that its composition, and thus its decisions, should reflect the interests of all parties concerned. It would be extremely difficult to reach an acceptable solution if the composition was falsely conceived in terms of the developed versus the developing countries. There was uneven development, and thus a diversity of interests, within both groups.

11. Attention should also be paid to the structure, powers and functions of the subsidiary organs, which were extremely important to the actual operation of the Authority. The Technical Commission, the Economic Planning Commission and the Rules and Regulations Commission required highly specialized personnel and a special effort must be made to ensure the independence and impartiality of their members in view of the doubts which had been expressed concerning the availability of such personnel from developing countries.

12. With respect to the settlement of disputes, he noted that two major categories of disputes were involved: disputes which were primarily contractual and administrative, and those which involved mainly the interpretation of the provisions of the convention. A distinction should be made between the two categories and a simpler and more expeditious procedure should be provided for disputes of a contractual and administrative nature. Juridical safeguards for the adjudication of such disputes were essential to proper administration and could serve to reduce possible political influence. Such safeguards could also provide the balancing element for a possible compromise on the institutional arrangements, particularly those relating to the powers, functions and composition of the principal organs. More time might be devoted to that subject at the current session, and particular attention might be focused on the organization of the system and the competence and jurisdiction of the Tribunal.

13. The three groups of issues he had mentioned were closely interdependent and every effort should be made to achieve parallel progress on all of them if success was to be achieved.

14. Referring to the general aspects of the Committee's work, he said that positive political will was desperately needed in order to bring the Committee's work to a successful conclusion. Despite sharply divergent interests, an identifiable common objective did exist, namely the establishment of a new legal order for ocean space as a prerequisite for peace and the survival of the international community. It was with that in mind that at the end of the previous session he had implored delegations to consult as actively as possible across interest lines and to keep him informed of their efforts. Since the situation called for important political decisions by representatives with plenipotentiary powers to commit their Governments, he had appealed for the issues before the First Committee to be negotiated at the sixth session at the level of heads of delegations. It had become clear that no significant solutions could emerge from a growing confrontation among technocrats who could do no more than advocate a national position dictated to them during the initial stages of the Committee's deliberations.

15. In his judgement, there had already been encouraging indications that the all-important question of political will was about to be answered in the affirmative. There appeared to be a new spirit which gave grounds for hope that the broader appeal for a clear and unequivocal solu-

tion of the outstanding problems before the Committee would meet with a favourable response. That had been demonstrated, moreover, by the reports of the valuable consultations which had taken place in various forms during the intersessional period, and he wished to thank and congratulate those nations which had undertaken bilateral consultations, the group of African States and the Group of 77, which had met to take a fresh and productive look at the issues before the Committee, and the Norwegian delegation in Geneva which had taken the initiative in bringing together the various interest groups in a preliminary effort to seek fresh avenues of mutual accommodation and compromise. He wished to express special gratitude to the representative of Norway for the formal and informal reports he had provided and his assessment of a new mood among representatives to resolve the outstanding problems in the over-all package. That assessment seemed to have been confirmed by the representations made to him by the vast majority of representatives during the previous two days. It appeared that all were resolved to get down to work immediately and to make full use of the period allocated for the Committee's work.

16. He hoped therefore that, with common resolve, the session would be free of confrontation and that the Committee's efforts would result in the compilation of the so-called composite negotiating text. That endeavour demanded the active participation of all. He invited all representatives to join him and the other officers of the Committee in a great crusade, as active members of a volunteer corps dedicated to finding solutions, and to seek out and talk to those whose positions and preoccupations were different from their own, so that possible solutions could be worked out jointly. Ideas should not be imposed on others, directly or indirectly. The search for the best solution should be seen in terms of the benefits that could accrue to mankind as a whole, leaving some margin of profit for those who might invest at the crucial early stages.

17. A productive approach might be for speakers to outline any problems they might have arising from the provisions recommended in the revised single negotiating text and to suggest a solution satisfactory to all. Succeeding speakers would then outline any difficulties they might have with such a solution, adding their own suggestions. Such a dialogue would lead to greater understanding and to the successful solution of difficulties. The Committee's work had reached a stage where excessive reiteration of national views and positions could only provide undesirable irritants.

18. As a volunteer corps, members of the Committee would have to work night and day, conscious that not only the success of the Conference, but also the whole future of generations unborn, depended on their efforts. The institutions to be set up as a result of the Committee's deliberations must provide new vistas of realistic international co-operation for the attainment and maintenance of lasting peace.

19. The new Authority was designed to bring mankind together to exploit a common heritage on behalf of all beneficiaries. It should be protected, not fought, directly or indirectly. In his opinion there was room for profit to accrue to investors, but they must not rival the Authority.

20. It would be a serious mistake for the Committee to lose its sense of perspective. The hour of decision had come, and the Committee should not think that time was on its side. The universal indignation of Governments with respect to the protracted negotiations, no matter how

justified the delay, should be recognized. If press reports were any indication, it would appear that international public opinion was also impatient. It would seem that the responsibility rested squarely on the shoulders of representatives, who had the privilege of having been granted plenipotentiary powers to commit their Governments on the issues before the Conference in general and the Committee in particular. To speak of the "unchangeable position" of any particular Government would perhaps be anachronistic and, in his opinion, it would be equally irresponsible and obstructive for one delegation to condemn another delegation for refusing to negotiate merely because its own national position was not accepted. If the Committee's efforts resulted in failure, only the members of the Committee could justifiably be blamed. To place the blame on Governments would be hypocritical, since their decisions were, for the most part, conditioned by the recommendations made to them by their representatives in the Committee.

21. The intention was not, however, to exonerate Governments, and he wished to renew the appeal he had made to all Governments in Caracas. He called upon the United States, a nation born in revolution and thriving on revolutionary growth, to lend an understanding ear. The new leadership in Washington was speaking refreshingly of a new morality, of strengthening the framework of international co-operation, of the plight of the ordinary people, of fundamental human rights. The exploited poor nations of the world, who were crying out for economic survival, were like those suffering deprivations within nations and he appealed to the United States to help to strengthen the Authority's capacity to organize peace through giving sustenance to a cherished hope for the benefit of rich and poor alike. He called on the Soviet Union, also born of a historic revolution, to play its vital role. Its socialist revolution had brought about a system that met the needs of the ordinary man. It had risen to great heights of wealth and technology and was well endowed with the capacity to understand the role that the new revolution of ideas represented by the Conference could play in international peace and security. He also called on France and the United Kingdom to share their experience of involvement with peoples across the globe which had undoubtedly given them a greater knowledge and understanding of global problems, and he called on the economic and technological giants of the era, Germany and Japan, to show understanding. The wisdom of the Chinese nation, which belonged to the third world, would necessarily enhance the quality of the dialogue, and he also appealed to his brothers

and friends in the third world to maintain their capacity for understanding and not to let the might of their numbers lure them into the arrogance for which they condemned others. In short, he called upon all nations to work together.

22. As he had indicated at the end of the previous session, he would regard the conduct of negotiations at all levels as his personal responsibility. The officers of the Committee had been elected to organize the negotiations, but, in the discharge of his responsibility, he hoped that he could call on the services of any member of the Committee at will. He would remain fully and solely responsible to the Committee and to the Conference as a whole, but it remained the duty of the Committee itself to negotiate.

23. He suggested that the three groups of issues to which he had referred should be taken as the target for negotiations, beginning with the first. He further suggested that an informal Chairman's working group of the whole should be set up and commence work immediately. He appealed to all members of the Committee to be ready to accept their responsibilities in that regard. The representative of Norway had kindly agreed to act as the Chairman's special co-ordinator in connexion with the first group of issues; he would represent the Chairman personally and would report to him directly every day. As Chairman, he himself reserved the right to ensure that the conduct of the negotiations for a package deal remained his responsibility and that of the officers of the Committee. If he heard no objection, he would take it that the Committee agreed to proceed in accordance with his suggestions.

*It was so decided.*

24. Mr. EVENSEN (Norway) thanked the Committee for the confidence they had expressed in him; he would do his best to carry out the responsibilities entrusted to him and he felt sure that he could count on the co-operation of all concerned. In organizing the informal consultations, the decision just taken by the Committee would be strictly adhered to. In order to ensure the flexibility which was so important, he proposed that an informal procedure be adopted. He would maintain close contact with the Chairman, whose guidance he would undoubtedly require, and would keep him fully informed on a day-to-day basis. Any texts resulting from the negotiations would, of course, be submitted to the Chairman, whose responsibility it would be to inform the Committee of the status of any proposals and the use to be made of them.

*The meeting rose at 12.35 p.m.*