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90th Plenary meeting

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whether the United Kingdom proposal was acceptable to that group. If it was, the problem might be solved.

74. Mr. CASTAÑEDA (Mexico) said that the United Kingdom proposal was very constructive and his delegation could accept it provided that item (4) contained the words "The right of access of certain developing coastal States in a sub-region or region".

75. The PRESIDENT observed that, in accordance with the United Kingdom proposal, the existing text of item (4) would be retained as it stood.

76. Mr. ARIAS SCHREIBER (Peru) thought that one way out of the difficulty would be to adopt the following text for item (4):

"Question of the right of access of land-locked States and certain developing coastal States (or: Question of the right of access of land-locked and geographically disadvantaged States) to the living resources of the exclusive economic zone."

A foot-note should be added, to the effect that both formula-

tions had been used in order not to prejudice the substantive positions of the delegations concerned.

77. Mr. GOERNER (German Democratic Republic) said that his delegation could support the United Kingdom proposal but not the Peruvian proposal, which gave the impression that the geographically disadvantaged States were the same as "certain developing coastal States". If the Peruvian proposal were accepted, it would also be necessary to delete the word "exclusive".

78. The PRESIDENT pointed out that the term "geographically disadvantaged States" did not differentiate between developed and developing countries.

79. Mr. ENGO (Cameroon) suggested that participants be given time to reflect on the various proposals that had been made.

80. The PRESIDENT said that he would suspend the discussion on item (4). He hoped that the delegations concerned would meet without delay for informal discussions.

The meeting rose at 12.50 p.m.

90th meeting

Wednesday, 12 April 1978, at 3.50 p.m.

President: Mr. H. S. AMERASINGHE.

Organization of work

Recommendation 5 (concluded)

1. The PRESIDENT urged all the delegations to try to agree on a compromise with regard to recommendation 5 in the Report of the General Committee on the organization of work for the seventh session (A/CONF.62/61), so as to extricate the Conference from the current impasse. Contrary to what the attitude of some delegations might suggest, the document in question was not the draft convention, but simply a series of proposals for the organization of negotiations.

2. He therefore suggested that the Conference should adopt wording which made it clear that the informal composite negotiating text¹ remained the sole basis of negotiations, but also alluded to the difficulties which the wording of certain provisions of that text caused delegations. Item (4) of recommendation 5 would then read:

"Right of land-locked States and certain developing coastal States in a subregion or region to the living resources of the exclusive economic zone.

"Right of land-locked and geographically disadvantaged States to the living resources of the zone."

3. The first part of the suggested text was based on the titles of articles 69 and 70 of the negotiating text. Similarly, item (6) of the recommendation would read:

"Definition of the outer limits of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles.

"Definition of the outer limits of the continental shelf and the question of revenue sharing.

"(The Secretariat's report on the definition of the outer

limits of the continental shelf, prepared at the request of the Second Committee, is to be produced as document A/CONF.62/C.2/L.98 and Add.1.)"

4. Following the suggestion by the United Kingdom delegation, the introductory portion of recommendation 5 might read:

"Negotiating groups of limited size—but open-ended—should be established to deal with the following hard-core issues, provided that the wording of the issues does not prejudice the position of any delegation concerning their substance:"

5. He hoped that all delegations would react reasonably to the proposed formulations, which in no way affected their freedom of manoeuvre.

6. Mr. WITEK (Poland) said his delegation would prefer that the Conference respect the decision of the General Committee and maintain for item (4) the wording contained in document A/CONF.62/61, subject to the addition of the sentence proposed by a number of delegations at the previous meeting. When used alone, the term "zone" was not sufficiently precise, and it would therefore be preferable to speak of the "economic zone". In any event, his delegation was greatly surprised that the Conference should seek to amend the compromise solution adopted by the General Committee.

7. The PRESIDENT pointed out that the Conference was not obliged to accept the General Committee's proposals. Furthermore, proposals by the President took precedence over all others.

8. Mr. ARIAS SCHREIBER (Peru) said that the General Committee had not taken any decision, but had simply made proposals to the Conference. The formulations suggested by the President were good, since they were based on the composite text, which took precedence over any suggestion by a delegation.

9. Mr. TUERK (Austria), speaking on a point of order, moved to suspend the meeting, in accordance with rule 30 of the rules of procedure.

¹Official Records of the Third United Nations Conference on the Law of the Sea, vol. VIII (United Nations publication, Sales No. E.78.V.4).

The motion to suspend the meeting was adopted by 38 votes to 29, with 18 abstentions.

The meeting was suspended at 4.15 p.m. and resumed at 5.05 p.m.

10. The PRESIDENT said that all delegations should be able to accept the wording of item (4) if the second sentence of the item read:

“Right of access of land-locked and geographically disadvantaged States to the living resources of the economic zone.”

The item would be accompanied by a foot-note reading:

“The first part of the item is the formulation required by the group of coastal States; the second part of item (4) is the formulation required by the group of land-locked and geographically disadvantaged States.”

11. Mr. CASTAÑEDA (Mexico) and Mr. TUERK (Austria), speaking on behalf of the group of coastal States and the group of land-locked and geographically disadvantaged States respectively, said that that wording was acceptable.

12. Mr. BEESLEY (Canada) suggested that, in the first part of recommendation 5, the words “provided that” should be replaced by the words “on the understanding that”, which were less ambiguous.

13. Mr. ARCULUS (United Kingdom) said that the amendment was acceptable.

14. The PRESIDENT said that, if there was no objection, he would take it that the Conference adopted the introductory portion of recommendation 5 as amended, and the revised text of item (4) which he had just read out.

It was so decided.

15. After an exchange of views in which Mr. ZEGERS (Chile), Mr. OXMAN (United States of America), Mr. NJENGA (Kenya), Mr. ARCULUS (United Kingdom), Mr. BEESLEY (Canada), and Mr. ENGO (United Republic of Cameroon) took part, the PRESIDENT said that it would be preferable to use for item (1) of recommendation 5, the wording contained in the report of the Chairman of the group of technical experts, which would entail replacing the text that currently appeared after the phrase “taking note of the work” by the words: “. . . of the informal group of technical experts invited to consider the technical problems associated with any formula that might be used to limit production of minerals from the area”. If there was no objection, he would take it that the Conference approved that wording.

It was so decided.

16. Mr. LUPINACCI (Uruguay), supported by Mr. DE LA GUARDIA (Argentina) and Mr. MORALES-SUÁREZ (Colombia), said that he could accept the use in item (6) of recommendation 5 of the wording which the President had read out at the beginning of the meeting. The first part of the text was in line with the title of article 82 of the informal composite negotiating text.

17. The PRESIDENT said that, if there was no objection, he would take it that the Conference adopted for item (6) of recommendation 5 the text which he had read out.

It was so decided.

18. Mr. AL-JAMALI (Oman) said that, as the representative of Spain had rightly pointed out at the previous meeting, the vital question of passage through straits used for international navigation had been omitted from the list of hard-core issues in recommendation 5. Unless that omission was remedied and a negotiating group set up to consider the question,

the impression would be created that the aim had been to present the Conference with a *fait accompli*.

19. The PRESIDENT reiterated that it would be open to delegations which so wished to raise that question in plenary meetings of the Conference, when taking up the problem of the settlement of disputes. It would still be possible to set up a negotiating group at that time.

20. Mr. ALMAGBALY (Yemen) said it was his delegation’s understanding that there was nothing to prevent the Conference, in plenary meetings or in committees, from examining questions not mentioned in the report of the General Committee (A/CONF.62/61), and, in particular, nothing to prevent the Second Committee from examining the question of passage through straits used for international navigation. It was true that, as the representatives of Spain and Oman had stated, that question had not been adequately discussed.

21. Mr. ATEIGA (Libyan Arab Jamahiriya) said that, while he had found the report of the General Committee generally acceptable, his delegation wished to make a statement concerning item (7) of recommendation 5. It considered that, both for legal and for geographical and topographical reasons, the question of the delimitation of maritime boundaries between adjacent or opposite States should be separated from that of the settlement of disputes thereon. He therefore proposed that item (7) should be amended to read “Delimitation of maritime boundaries between adjacent or opposite States and related questions”. His proposal was in no way incompatible with the provisions of article 74 of the informal composite negotiating text and could only serve to facilitate the work of the Conference.

22. The PRESIDENT explained that there had been express agreement to word item (7) as it stood, in view of the special nature of the problem of the delimitation of maritime boundaries between adjacent or opposite States. It was a problem which, like that of the exercise of the sovereign rights of a coastal State in its exclusive economic zone, could be properly resolved only if provision was made for suitable methods of settling disputes thereon. It was hard to see how the Plenary Conference could include the question of the delimitation of maritime boundaries in its study of procedures for the settlement of disputes. Moreover, the composite negotiating text already provided, in article 74, paragraph 2, and article 83, paragraph 2, that if the States concerned failed to reach agreement on the delimitation of their maritime boundaries, the procedure for the settlement of disputes would apply. It was therefore logical for the two possible methods of delimitation to be studied by the same group.

23. Mr. PAPADOPOULOS (Cyprus) shared the President’s opinion and considered that item (7) should be retained in its present form.

24. Mr. YOLGA (Turkey) felt that the question of the delimitation of maritime boundaries between adjacent or opposite States and that of the settlement of disputes thereon were not so closely linked as it might seem: the need in the first case was primarily to define the methods to be used by States for delimiting their maritime boundaries; procedures for the settlement of disputes, on the other hand, were not specific and must be such as to permit the settlement of any disagreement concerning the application or interpretation of the future convention. The suggestion by the representative of the Libyan Arab Jamahiriya was therefore worthy of consideration.

25. Mr. MORALES-SUÁREZ (Colombia) considered, on the contrary, that the two questions were indissolubly linked. Indeed, that was how they appeared in articles 74 and 83 of the informal composite negotiating text.

26. Mr. IBÁÑEZ (Spain) supported the comments made by the representatives of Cyprus and Colombia concerning item

(7) of recommendation 5 and thought that the President's explanations concerning the relevant articles of the composite text were perfectly clear.

27. The problem of passage through straits used for international navigation was very important, and he hoped the Plenary would set up a special group to study it.

28. Mr. CREMIN (Ireland) saw no fundamental difference between the problems of the settlement of disputes concerning the delimitation of maritime boundaries between adjacent or opposite States and those of the settlement of disputes concerning the application or interpretation of the future convention in relation to other matters. His delegation therefore supported the proposal by the representative of the Libyan Arab Jamahiriya.

29. Mr. NAKAGAWA (Japan) said that he shared fully the opinion of the President and associated himself with the comments made by the representatives of Cyprus, Colombia and Spain. His delegation considered that no change should be made to item (7).

30. Mr. KOZYREV (Union of Soviet Socialist Republics) approved the President's explanations and the General Committee's recommendation.

31. Mr. STAVROPOULOS (Greece) likewise approved the arguments put forward by the President to explain why the two questions had been treated together.

32. The PRESIDENT explained that, even though the two questions would be considered together, the matter of the delimitation of maritime boundaries between adjacent or opposite States would remain within the purview of the Second Committee, and that of the settlement of disputes would still be the subject of a separate part of the future convention.

33. Mr. ARIAS SCHREIBER (Peru) urged delegations which had raised objections to accept the recommendation of the General Committee.

34. Mr. ATEIGA (Libyan Arab Jamahiriya) said that he would accept the General Committee's recommendation if the delegations which had supported his proposal were also willing to do so.

35. The PRESIDENT said that if there was no objection, he would take it that the Conference adopted recommendation 5 as a whole, as amended.

Recommendation 5 was adopted.

Recommendation 6

36. The PRESIDENT said that the recommendation in question listed issues which had not been considered or had been insufficiently considered. Item (iii) (preamble and final clauses) would be considered in the plenary, while items (i) (regime of islands) and (ii) (the question of enclosed and semi-enclosed seas) would be considered by the Second Committee.

37. Mr. SHARMA (Nepal) proposed that the words *inter alia* be inserted after the words "may include".

38. The PRESIDENT saw no objection, since that list was not an exhaustive one either.

39. Mr. PRANDLER (Hungary) said that, since article 121 of the informal composite negotiating text, on the regime of islands, offered a generally acceptable solution, he found it difficult to see why the Conference should reopen the question. If the intention was to amend or delete paragraph 3 of the said article, his delegation would be opposed.

40. The Hungarian delegation thus proposed that item (i) be amended to read:

"Regime of islands and the question of the invalidity of claims of sovereignty over the high seas surrounding the islands."

In that way, the discussion on the regime of islands would concentrate on a question of vital interest to the land-locked and geographically disadvantaged countries, as well as to the international community in general, namely, the ban on illegal and unilateral appropriation of vast areas of the high seas which should belong to all States.

41. The PRESIDENT thought it was preferable not to formulate issues in a way which appeared to prejudice their solution and therefore requested the representative of Hungary to withdraw his suggestion.

42. Mr. KASEMSRI (Thailand) said that his delegation was able to accept items (i) and (iii) as they stood but, in view of the heading of part IX of the informal composite negotiating text, he hoped that the words "the question of" in item (ii) would be deleted.

43. The PRESIDENT saw no objection to that proposal.

44. Mr. RUIVO (Portugal) thought that efforts should be concentrated at the current session on key points rather than on reopening the debate on a number of other questions, including those indicated in recommendation 5, on which reasonable agreement had been reached. Nevertheless, to heed those delegations who wished to return to those questions they felt had been insufficiently dealt with, with a view to the revision of the negotiating text, Portugal proposed replacing the text of recommendation 6 by the following:

"Other questions may also be considered in accordance with recommendation 2 above, if time permits".

45. The PRESIDENT said that item (iii) (preamble and final clauses) could not be deleted, since it had not been considered at all. Consequently, he requested the representative of Portugal not to press his proposal.

46. Mr. IBÁÑEZ (Spain) said that items (i) and (ii) could always be considered under recommendation 2. He therefore agreed with the proposal by the Portuguese representative; but it would be even more logical either to delete recommendation 6 or to amend it to read:

"The question of the preamble and final clauses as provided for in recommendation 13."

47. The PRESIDENT proposed that only the first sentence, up to the words "recommendation 2 above", should be retained, with the addition of "; in particular, the preamble and final clauses will be examined in plenary."

48. Mr. GAYAN (Mauritius) said he was unable to accept the President's proposal. He thought that only the first sentence of the recommendation should be retained. As it stood, the recommendation did no more than repeat recommendation 2 in respect of items (i) and (ii), while item (iii) was covered by recommendation 13.

49. Mr. ARIAS SCHREIBER (Peru) said he preferred the solution proposed by Mr. Amerasinghe. The reference to particular issues could be deleted and the words "with due regard to the recommendations in paragraph 13" be added.

50. Mr. DABB (Papua New Guinea) said he could accept the wording suggested by the President. He urged the need to establish an order of priority for consideration of the various issues and to avoid a proliferation of negotiating groups.

51. Mr. SHARMA (Nepal) proposed a second amendment whereby an item (iv) would be added, to read as follows:

"Right of access of land-locked States to and from the sea and freedom of transit".

52. Mr. PERIŠIĆ (Yugoslavia) favoured retaining the text as adopted by the General Committee but was able to accept the first Nepalese amendment. He stressed that the list of issues included in the recommendation was not exhaustive, and that further items could be added to it in due course.

53. Mr. KASEMSRI (Thailand) said that as the discussion revealed, items (i) and (ii) were indeed controversial. In fact,

the General Committee had had a proposal that they be included in recommendation 5, and it was in a spirit of compromise that some delegations had agreed to their appearance in recommendation 6. They should thus be kept there and the text retained as it stood, on the understanding that the first Nepalese amendment was acceptable. It was essential that controversial issues should be listed in the recommendations, so that they could be given priority consideration.

54. Mr. BENCHEIKH (Algeria) said it was indeed in a spirit of compromise that his delegation had agreed, in the General Committee, that the question of the regime of islands should appear in recommendation 6 rather than in recommendation 5. The delegations in favour of retaining items (i) and (ii) simply wished to be certain that negotiations would continue on those subjects. They recognized that the list was not complete and that other delegations were entitled to put forward other issues. If it proved impossible to retain the present wording of recommendation 6, his delegation would have to reconsider its position and return to its initial proposal, namely that item (i) be incorporated in the list appearing in recommendation 5.

55. Mr. MWANGAGUHUNGA (Uganda) supported the Nepalese amendments.

56. Mr. YOLGA (Turkey) thought that the General Committee had been perfectly right to attempt to define the problems that it was essential to solve if a convention was to be successfully prepared. There was nothing to criticize in the list of hard-core issues in recommendation 5. It was none the less true that the issues mentioned in recommendation 6, albeit relatively less important in themselves than the so-called hard-core issues, were just as essential for the success of the Conference. They were not, perhaps, of direct concern to all delegations, but they affected the vital interests of some countries and might thus be still more difficult to solve. There could be no minimizing the importance of items (i) and (ii), which it had not yet proved possible to settle satisfactorily and which definitely had to be settled. Incidentally, he would not object to other problems being mentioned if the Conference should deem it appropriate.

57. The PRESIDENT proposed, in order to take account of the special interests of the various delegations, that a sentence reading: "This list is not exhaustive and does not imply any degree of priority" be added to the text of recommendation 6.

58. Mr. FERNANDO (Sri Lanka) referred to rules 16 to 19 of the rules of procedure, which defined the functions of the General Committee. The Plenary was undoubtedly entitled to consider the General Committee's report, but it should do so without lingering over details, since it was the responsibility of the General Committee and the President to organize the work.

59. Mr. STAVROPOULOS (Greece) said he was able to accept the President's latest suggestion.

60. Mr. PRANDLER (Hungary) said that since he was anxious to facilitate the work he would withdraw the amendment he had submitted, on the understanding that the Conference would adopt the President's first proposal. He regretted that the President should have stated that the Hungarian amendment prejudged the solution to the question.

61. The PRESIDENT explained that he had opposed proposals which might be interpreted tendentiously.

62. Mr. KOZYREV (Union of Soviet Socialist Republics) said he thought that it would be appropriate to adopt the first solution proposed by the President, which would enable any delegation to raise questions of particular importance to it.

63. Mr. RABETAFIKA (Madagascar) said he was in favour of the President's second proposal.

64. Mr. DE LACHARRIÈRE (France) said that he was able to accept the General Committee's proposal and the President's first proposal. On the other hand, his delegation would have to reconsider its position if an attempt was made to add further issues, whatever they might be, to the existing list. What the Conference was trying to identify was not the most important issues but the issues that were most difficult to settle and those which gave rise to the most serious differences of opinion. If a list of the most important issues were drawn up, his delegation would insist on the inclusion in it of the legal régime for the control of pollution by sea-going vessels and the powers of States in the matter. His delegation thought that that was one of the important issues but not one of the most hard-core issues and, consequently, it had not insisted that it should appear either in recommendation 5 or in recommendation 6, being satisfied with the reference in recommendation 8. Nevertheless it intended to refer in the Third Committee to the lessons that should be learnt from the recent catastrophe of the *Amoco Cadiz*, and to put forward certain proposals.

65. Mr. IBÁÑEZ (Spain) agreed with the views of the representative of the Soviet Union and supported the President's first proposal.

66. Mr. ROSENNE (Israel) wondered what procedure would be followed in working out the final clauses. According to the General Committee's recommendations, those clauses would only be considered by the plenary, although consideration in a committee might perhaps be necessary. He hoped that the arrangements made in that respect were sufficiently flexible.

67. The PRESIDENT said that the matter was one for the plenary, which was responsible for deciding on the procedure to be followed.

68. Mr. BENCHEIKH (Algeria), supported by Mr. RABETAFIKA (Madagascar) asked that the Conference be invited to choose between retaining the existing wording of recommendation 6 and the President's second proposal.

69. Mr. ARIAS SCHREIBER (Peru) requested, under rule 29 of the rules of procedure, that the discussion on recommendation 6 be closed and that the President's second proposal be put to the vote.

70. The PRESIDENT said that, if there were no objections, he would take it that the discussion on recommendation 6 was closed and that the second proposal he had made was adopted.

It was so decided.

Recommendation 7

71. The PRESIDENT said that if there were no objections, he would take it that recommendation 7 was adopted.

Recommendation 7 was adopted.

Recommendation 8

72. Mr. BEESLEY (Canada), Mr. OXMAN (United States of America) and Mr. NJENGA (Kenya) said that they strongly supported the adoption of recommendation 8.

73. The PRESIDENT said that if there were no objections, he would take it that recommendation 8 was adopted.

Recommendation 8 was adopted.

Recommendation 9

74. The PRESIDENT said that if there were no objections, he would take it that recommendation 9 was adopted.

Recommendation 9 was adopted.

Recommendation 10

75. Mr. OXMAN (United States of America) said that the meaning of the recommendation seemed clear to his delegation; modifications emerging from the negotiations or prepared in plenary and found to offer a substantially improved prospect of a consensus should be made, others should not.
76. Mr. ENGO (United Republic of Cameroon) said he would like to know how the President intended to apply the recommendation and, in particular, what he understood by an "overwhelming majority" of representatives at the Conference.
77. The PRESIDENT replied that anyone who had ever been a chairman had encountered situations where a proposal attracted an overwhelming majority or massive support. In such cases it was necessary nevertheless to take the circumstances into consideration, and the chairman of the body concerned had to be able to weigh up fairly the general feeling emerging from the debates.
78. Mr. TUERK (Austria) said that it was difficult to decide what was an "overwhelming majority"; the convention should, moreover, be drawn up as far as possible on the basis of consensus decisions, and the term "majority" might perhaps rather suggest voting. He therefore proposed that the words "found acceptable by the overwhelming majority of the members of the Conference so as to offer . . ." should be deleted and replaced by the words "found to have widespread support within the Conference so as to offer . . .".
79. The PRESIDENT pointed out that it was a matter of revising not a final draft for a convention but merely the informal composite negotiating text; the distinction between the adoption of the proposal by consensus or by a majority of the members of the Conference was therefore not vital.
80. Mr. KOH (Singapore) said that the term "majority" seemed to assume a method of assessing support for a proposal, by way of a show of hands, for instance. It seemed to him desirable, however, not to give the impression that an indicative vote would be needed to ascertain that the overwhelming majority of participants at the Conference were in favour of a modification.
81. The PRESIDENT said that to avoid using the word "majority" the end of the sentence might be reworded more or less as follows: "modifications or revisions . . . found to command a degree of support within the Conference that offers . . .".
82. Mr. ARIAS SCHREIBER (Peru) said that the expression "overwhelming majority" was perfectly clear and should not be deleted, since the interpretation of the idea of "support" might give rise to controversy.
83. Mr. BEESLEY (Canada) said that, like the representative of the United States of America, he recognized the categorical nature of the conditions set out in the recommendation. That being so, he was inclined to agree with the objections raised to the expression "overwhelming majority", which seemed to envisage a voting procedure. He therefore proposed that the words in question be deleted and the last part of the recommendation amended to read ". . . unless presented to the plenary and found to offer a substantially improved prospect of a consensus."
84. Mr. ARIAS SCHREIBER (Peru) said that he could accept, as a compromise, the deletion of the words "overwhelming majority", but proposed at the end of the sentence, after "plenary", the following: "and accepted by consensus or considered acceptable by a sufficient majority of the representatives at the Conference to be likely to offer an improved prospect of reaching a consensus." He would prefer to retain the word "majority" so that the prospects for reaching a consensus could be estimated objectively and not by reference to a vague form of words.
85. Mr. HYERA (United Republic of Tanzania) found the present wording perfectly satisfactory. In his opinion, only the existence of an overwhelming majority could indicate to the President the possibility of a consensus being reached. In view of the objections which had been raised to the expression "overwhelming majority", however, he could agree to its being deleted and replaced by the words "widespread support", which implied an equivalent concept.
86. Mr. LUPINACCI (Uruguay) said that, like the representative of the United Republic of Tanzania, he found the text as it stood perfectly satisfactory.
87. Mr. ENGO (United Republic of Cameroon) supported the proposal by the representative of Austria.
88. Mr. KOZYREV (Union of Soviet Socialist Republics) considered that the main point of the recommendation was to ensure that a proposal would not be incorporated in the text unless it significantly improved the prospect of a consensus. In view of the various interpretations that might be given to the words "overwhelming majority" or "widespread support", he thought it would be better to adopt the proposal by the representative of Canada.
89. Mr. WOLFF (Federal Republic of Germany) and Mr. TUERK (Austria) also supported the proposal by the representative of Canada.
90. Mr. CALERO RODRIGUES (Brazil) thought the form of words suggested by the representative of Canada would not give any chairman an indication as to how he should proceed and left it entirely to that chairman's subjective judgement whether a proposal was eligible for consideration. Nor was he pleased with the formula proposed by the representative of Austria, which was insufficiently clear. He suggested the formula: "unless the modification or revision has been presented to the Plenary and found to command the overwhelming support of the Conference, so as . . .".
91. Mr. JAGOTA (India) pointed out that the purpose of recommendation 10 was to emphasize that any modification should be the outcome of negotiations. If it was being submitted by the President of the Conference or the chairman of a committee, it must be possible to assume that it would undoubtedly improve the prospects of reaching a consensus, which implied that it must be evaluated objectively and not subjectively. The expression "overwhelming majority" had been used to ensure such objectivity; it did not necessarily imply a vote. Words such as "substantial" or "adequate support" introduced an element of subjective judgement, which ran counter to the spirit of the recommendation. Moreover, the deletion of any reference to the majority or the support of representatives at the Conference, as the representative of Canada proposed, amounted to leaving the initiative for proposals in the hands of the President. To reconcile all points of view, he suggested the following words: "unless presented to the plenary and objectively found to offer a substantially . . .".
92. Mr. DE LA GUARDIA (Argentina) agreed with the representative of India as to the need for objective criteria, but felt that the existing text was still clearer than the one the latter had proposed.
93. Mr. CASTAÑEDA (Mexico) considered, like the representative of Brazil, that the only objective criterion was the volume of support for a proposed amendment, as indicated by the existence of a substantial majority in its favour. He could not accept the proposal by the representative of India, since the term "objectively" could be interpreted in various ways.
94. The difficulties to which the existing text gave rise perhaps derived from the English word "overwhelming", which was too strong. To avoid its use, he suggested the following

wording based on that proposed by the representative of Brazil: "and found to command such widespread and substantial support within the Conference as to improve the possibility of a consensus." So worded, it would be clear that the "support" was to be measured according to qualitative as well as quantitative criteria.

95. Mr. KOH (Singapore) supported the proposal by the representative of Mexico.

96. Mr. BEESLEY (Canada) pointed out that all the expressions proposed so far to replace the words "overwhelming majority" introduced an element of personal judgement. It was impossible to refer to support which was "adequate", "substantial", "widespread", "considerable", etc., without bringing in subjective considerations. The one vital point in recommendation 10, however, was that the proposal should improve the prospect of reaching a consensus. In submitting his amendment, his idea had been to stress that point and to delete all the words in the recommendation which might cause any confusion.

97. Nevertheless, in view of the concern expressed by other delegations, he would be willing to support the proposal by the representative of Austria or to accept the following form: "and found by the plenary to offer a substantially improved prospect of reaching a consensus."

98. The PRESIDENT said it had always been understood that the proposal had to be accepted by the plenary, and he did not see the point of that amendment.

99. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that, like the representatives of the United Republic of Tanzania, Peru and Uruguay, he found the existing text of the recommendation satisfactory.

100. Mr. LUPINACCI (Uruguay) proposed, in order to take into account the concern expressed by some delegations, the following compromise form of words: "and found, from the immense support expressed in the plenary, to offer a substantially improved prospect of a consensus". That amendment would reduce to a minimum the subjective factor, which was unavoidable, and it had the advantage of indicating clearly that the proposal must be expressly supported by a large number of representatives at the Conference, while avoiding the word "majority" which suggested a vote or some other formal decision.

101. The PRESIDENT pointed out that the proposal by the representative of Uruguay substantially repeated that of the representative of Mexico, which had referred to "sufficiently widespread and substantial support".

102. Mr. OXMAN (United States of America) said he was ready to accept any of the proposals which had been made other than those by the representatives of Peru and Brazil. His delegation would prefer a more flexible wording than the existing text. In that respect, structurally the Uruguayan proposal seemed to him the best. However, the wording proposed by the representative of Mexico could be taken as a basis and the words "widespread and substantial support" used.

103. Mr. MAÏGA (Mali) wondered whether it would not be simpler to refer to a "considerable number" or a "large number" of representatives, which would make it possible to bear in mind the idea of majority without being open to the criticisms voiced earlier.

104. Mr. NANDAN (Fiji) thought it was possible to identify many points of agreement between delegations on the substance of the matter; the stumbling-block seemed to be the precise wording. He therefore proposed suspending consideration of the recommendation and passing on to the later recommendations, so as to allow delegations to reach agreement on a compromise text.

105. Mr. OXMAN (United States of America) asked that

consideration of the related recommendation 15 be left pending at the same time.

106. The PRESIDENT proposed that consideration of recommendations 10 and 15 should be left pending.

It was so decided.

Recommendation 11

107. Mr. NJENGA (Kenya) said that, as he understood it, the recommendation did not confer new powers on the President of the Conference and the chairmen of the committees; it was merely concerned with the implementation of decisions taken under recommendation 10.

108. The PRESIDENT confirmed that interpretation and said that if there were no objections, he would take it that the Conference adopted recommendation 11.

Recommendation 11 was adopted.

Recommendation 12

109. The PRESIDENT explained that the time-table was only provisional and could be revised if necessary.

110. Mr. DABB (Papua New Guinea) proposed that the following words should be inserted at the beginning of the recommendation: "While the procedures set out in this document are appropriate to the general future conduct of negotiations up to the formulation of the text, . . .". That would make the time-table less rigid and also make its purpose clear.

111. The PRESIDENT pointed out that the wording proposed by the representative of Papua New Guinea would duplicate the last part of recommendation 12.

112. Mr. DABB (Papua New Guinea) withdrew his proposal.

113. The PRESIDENT said that, since there were no objections, he would take it that the Conference adopted recommendation 12.

Recommendation 12 was adopted.

Recommendation 13

114. Mr. CASTAÑEDA (Mexico) asked if the President would confirm the interpretation he had given to the last sentence of recommendation 13, namely, that in the first stage the plenary would function as a committee.

115. The PRESIDENT confirmed that, as he had said when introducing document A/CONF.62/61, his interpretation was that the negotiations on the settlement of disputes, the preamble and the final clauses would be conducted in the same way as for other matters, namely, in committee and in plenary meeting, and that in the first stage, the plenary would follow the same procedure as the main committees. If there were no objections, he would take it that the Conference adopted recommendation 13.

Recommendation 13 was adopted.

Recommendation 14

116. The PRESIDENT said that in view of the fears expressed in the General Committee by the representative of Fiji he would try to organize the work so that the chairmen of the committees could take part in the plenary negotiations.

117. If there were no objections, he would take it that the Conference adopted recommendation 14.

Recommendation 14 was adopted.

Recommendation 10 (continued)

118. The PRESIDENT read out the following compromise text which had been prepared by the delegations concerned:

“ . . . unless presented to the plenary and found, from the widespread and substantial support prevailing in the plenary, to offer a substantially improved prospect of a consensus.”

119. If there were no objections, he would take it that the Conference adopted recommendation 10, as thus amended.

Recommendation 10 was adopted.

Recommendation 15

120. The PRESIDENT said that if there were no objections he would take it that the Conference adopted recommendation 15.

Recommendation 15 was adopted.

121. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that he had some comments on document A/CONF.62/61 as a whole. The recommendations it contained could be divided into three categories: recommendations on important and controversial issues, such as recommendation 5; recommendations on matters of less immediate interest, such as recommendation 6; and recommendations on matters still pending, such as recommendation 1.

122. His delegation felt that the classification was tendentious since it reflected the wish of certain States to give priority to questions of direct interest to them; while problems that were vital to the developing countries were relegated to the background. Recommendations 5 and 6 should have been redrafted so as to ensure a fairer arrangement and to give due attention to matters of concern to the majority of the delegations.

123. Recommendations 2 and 6 were specially important, since some extremely important questions had not been adequately dealt with at the sixth session of the Conference. For example, at the instigation of the great Powers the question of the peaceful uses of ocean space had been ignored; likewise the question of safeguarding the rights of States which had established the limits of their territorial sea at more than 12 miles from their coastline. In addition, the problem of archipelagos which were not States, and those of baselines and the right of passage through straits used for international navigation, which concerned a large number of States, had merely been touched on.

Section III

124. The PRESIDENT pointed out that Section III was merely for information and did not require any decision by the Conference.

Section IV

125. The PRESIDENT asked if the representatives of Peru and Algeria were satisfied with the text of Section IV which reproduced their proposals.

126. Mr. ARIAS SCHREIBER (Peru) expressed his satisfaction with the wording of Section IV.

127. The PRESIDENT said that, if there were no objections, he would take it that the Conference adopted document A/CONF.62/61 as a whole, as amended.

It was so decided.

128. Mr. ENGO (United Republic of Cameroon) said that the present system of producing negotiating texts through the efforts of the committee chairmen had been devised so as to

put an end to the grave difficulties that were holding up proceedings. It had been made clear at once that the text would constitute an informal basis for further negotiation and that it would bind no one.

129. He had observed with regret that some delegations had resorted to personal attacks on officers of the Conference, including himself, which had been picked up and exaggerated by the press.

130. As chairman of the First Committee, he reminded participants that he had explained on many occasions to delegations concerned why, for example, texts which he had prepared showed the site of the proposed international seabed Authority. He had not concealed the reasons for his attitude, as witness the notes attached to the negotiating texts.

131. He had been accused by the international press, in no uncertain terms, of having ignored an alleged agreement said to have been worked out under the leadership of his co-ordinator, Mr. Evensen. In that connexion he would like to explain that the full responsibility to the Conference regarding the informal composite negotiating text rested on the chairman of the relevant committee, not on his co-ordinator. Indeed, Mr. Evensen had not been successful in inducing delegations to agree to any text, as he had made very clear in his verbal and written reports to him as the chairman of the First Committee.

132. Mr. Evensen had prepared personal recommendations at his (Mr. Engo's) request, and he himself had distributed them to the members of the Committee, all of whom, without exception, had informed him of their reactions before he had submitted his own text for full consideration by the team headed by the President of the Conference.

133. Most delegations had ultimately rejected Mr. Evensen's proposals, so that the contents of part XI of the informal composite negotiating text dealing with sea-bed mining in the area had been produced by himself personally after intensive consultations, except for the parts worked out by groups of experts and *ad hoc* groups set up to deal with financial arrangements and aspects of the resource policy relating to the area. In all those cases, the interested delegations had actively participated in drafting the texts.

134. He found it difficult, in the circumstances, to see how he could be accused of having failed in his duties. If a generally agreed text had in fact been produced through Mr. Evensen's endeavours, he would be happy for it to be considered and adopted. He had used many of Mr. Evensen's recommendations in preparing the parts of the informal composite negotiating text within the competence of the First Committee and had performed that task in the hope of producing a sound basis for further negotiations on those issues on which opposing views were still strong.

135. He hoped that he had now removed any danger of misunderstanding of the role of the officers of the Conference, in particular the chairmen of committees, and that the Conference would make greater use of him in the difficult task it was now about to tackle.

Mr. Haque (Pakistan), Vice-President, took the Chair.

*Question of the presidency of the Conference (continued)**

136. Mr. CASTAÑEDA (Mexico) said that his delegation maintained the reservations and objections it had expressed after voting against the proposal by the group of Asian States on the question of the presidency.

137. Having said that, there could be no question that the Conference had in fact settled the question by a majority

*Resumed from the 88th meeting.

decision, however much that solution might be open to criticism both in principle and in law. His delegation would not impede the implementation of that decision, since its main concern was that the Conference should proceed with its task with all speed. It was ready to offer full support in preparing a universal treaty on the law of the sea.

138. Mr. ARIAS SCHREIBER (Peru) said his Government considered that the presence, as an officer of the Conference, of a person who did not represent any State and therefore had no right to participate in the Conference, was illegal, and the decision taken by less than half the delegations participating in the Conference, in contradiction of the rules of procedure, in no way altered the situation.

139. That decision had legal, administrative and financial implications which would have to be assessed.

140. From the legal point of view, it would have to be decided whether it was now accepted that a private individual who did not represent any State could participate and hold high office in a plenipotentiary conference.

141. On the administrative level, he would like to know what steps the Secretary-General had taken to enable the person at present holding the position of President to carry out his functions, whether a contract had been signed, and if so on whose initiative and for how long; he would also like to know whether the person in question came administratively under the Secretary-General and whether he was responsible to the Secretary-General.

142. He would also like to know the financial implications of the decision for the States Members of the United Nations. He requested the Special Representative of the Secretary-General to provide full information on those points and he

reserved the right to speak again if the replies called for comment.

143. Mr. ZULETA (Special Representative of the Secretary-General) replied that, as far as the legal implications of the appointment of the President and the possibility of setting a precedent were concerned, it was not for the Secretariat to predict how the Conference's decision might be interpreted in the future by other United Nations bodies.

144. Regarding the administrative implications, he said that the secretariat had not taken any steps to enable the President to carry on his functions, since the Conference had not so requested, and the secretariat could not act without precise instructions from the Conference. However, arrangements had been made, in agreement with the Secretary-General, to enable the secretariat to consult Mr. Amerasinghe, pending a solution of the problems concerning the presidency.

145. Lastly, the financial implications of the decision taken by the Conference would depend on what instructions the latter might give to the Secretary-General to enable the President to carry out his functions. The secretariat could not take any steps without a decision by the Conference.

146. Mr. TUERK (Austria), speaking on a point of order, moved the adjournment of the meeting.

147. Mr. VELLA (Malta) opposed the motion.

148. The PRESIDENT, citing rule 30 of the rules of procedure, invited the Conference to decide immediately on the motion of the representative of Austria.

The motion for adjournment was adopted.

The meeting rose at 9.45 p.m.

91st meeting

Thursday, 13 April 1978, at 10.55 a.m.

President: Mr. M. YUNUS (Pakistan).

Question of the presidency of the Conference (concluded)

1. Mr. EVENSEN (Norway) observed that certain financial matters had to be discussed, and proposed that they be discussed in closed meeting.

2. Mr. ARIAS SCHREIBER (Peru) requested that a summary record should be made of the closed meeting.

It was agreed that the matters referred to by the Norwegian representative should be discussed in closed meeting, and that a summary record should be made of the discussion.¹

The public meeting was suspended at 11 a.m. and resumed at 12.30 p.m.

Mr. H. S. Amerasinghe took the Chair.

Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973

3. Mr. ARIAS SCHREIBER (Peru) said that he had pleasure in introducing the Peruvian proposal on the establish-

ment of an international commission on the law of the sea (A/CONF.62/L.22). The idea of establishing a permanent institution to deal with the problems that might arise from the application of the provisions of the convention, or from situations not provided for in the convention, had existed from the beginning of the Conference, but had not received appropriate attention at earlier sessions. The time had come to make good that omission.

4. As Mr. Zuleta, Special Representative of the Secretary-General, had stated at the last session of the Asian-African Legal Consultative Committee in January 1978 it was necessary to look to the future and establish an institutional framework that would ensure the consistent and uniform application of the provisions of the convention and would help to deal with any situations that might arise in relation to the progressive development of the law of the sea.

5. In the same statement Mr. Zuleta had recalled that the Secretary-General had expressed the view at Caracas in 1974 that the Conference might consider the establishment of certain institutional machinery, such as a periodic meeting of the States parties to the convention, to consider problems arising either from the actual provisions of the convention or from new uses of the sea. He had also recalled that the delegations of Sri Lanka, Portugal and Suriname had made similar suggestions—during the discussion on the settlement of dis-

¹The summary record of the second part (closed) of the meeting appears as document A/CONF.62/SR.91/Add.1, the distribution of which was restricted.