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114th Plenary meeting

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114th meeting

Thursday, 26 April 1979, at 3.50 p.m.

Chairman: Mr. H. S. AMERASINGHE.

Establishment of marine scientific and technological centres

1. The PRESIDENT read out, for information, a communication from the Government of Sri Lanka offering Sri Lanka as the site for a centre for Southern Asia, should such an institution be established.

Date and place of the next session

2. The PRESIDENT said that the Conference should be informed about the facilities and services that would be available to it in New York if it decided to hold another session or a resumed eighth session during the summer. He would therefore invite the Special Representative of the Secretary-General to make a statement on the matter.

3. Mr. ZULETA (Special Representative of the Secretary-General) stated that, in accordance with General Assembly resolution 33/17, the Conference was empowered to decide to hold further meetings in 1979 under arrangements to be determined in consultation with the Secretary-General but that, under the terms of General Assembly resolution 32/72, only the Committee on Conferences could make changes in the calendar of meetings approved by the Assembly. For a resumption of the session or for a new session, the only period when the Secretariat could provide services for the Conference in New York would be from 17 July to 23 August.

4. The PRESIDENT said that delegations would be invited to take a decision on that question on the following day, after the regional groups had held consultations.

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*)

5. The PRESIDENT summarized the remarks he had made at an earlier meeting on the organization of work. He repeated that every delegation had the right to reserve its position on any particular provision of the informal composite negotiating text¹ until it had received satisfaction on other issues which were of vital importance to it; that was the only reasonable interpretation that could be given to the idea of a package deal. With regard to the text as a whole, the Conference could choose between two courses. It could purely and simply revise it with a view to producing not necessarily a final version but rather, for example, a draft preparatory to a final revision; or else it could incorporate all the approved changes in a new document which would be circulated under the symbol ICNT/Rev.1. The Conference would take a decision after hearing the reports of the Chairmen of the Committees on the progress of their work.

REPORT OF THE CHAIRMAN OF THE FIRST COMMITTEE

6. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, said that the matters before the First Committee had been referred to Negotiating Groups 1, 2 and 3, and that the results of the negotiations in those Groups were contained in documents NG1/16 and Corr.1 and Rev.1 (see A/CONF.62/L.35, annex III), NG1/17 (*ibid.*, annex II), NG2/4 (see A/CONF.62/C.1/L.22, annex I), NG2/5/Rev.1 (*ibid.*, annex II), NG2/12/Rev.1 (*ibid.*, annex III) and NG3/6. During the session, he had decided, in consultation with the President of the Conference, to set up a Group of Legal Experts to ex-

amine legal questions in so far as they related to part XI of the negotiating text, concerning the area. The result of the negotiations in the Group of Legal Experts was contained in working paper GLE/2 (see A/CONF.62/C.1/L.25 and Add.1, annex V). The working group of 21 had also been set up during the eighth session, on the initiative of the developing countries. Its purpose was to consider part XI of the negotiating text and the corresponding annexes. During the session, the First Committee had met only once to consider the progress of the work of its subsidiary bodies.

7. The work of the First Committee had been particularly difficult since, in addition to facing the problems common to all the Committees, it had had to consider an absolutely new subject with no precedent to guide it and had been attempting to work out rules and regulations for the exploitation of the seabed on the basis of assumptions which might prove to be wrong. Nevertheless, for the first time in a long while and without claiming that all the hard-core issues had been resolved, it was now possible to speak of consensus on some issues.

8. The most difficult task the Committee had had to tackle related to the financial arrangements concerning the Authority and the Enterprise, and the terms of contracts for exploration and exploitation. Several sessions had been needed in order to identify all the elements involved.

9. The negotiations at the present session and the previous session had resulted in the very clear proposals contained in documents NG2/4, NG2/5/Rev.1 and NG2/12/Rev.1.

10. With regard to the financial arrangements for the Authority (NG2/4), it was generally felt that a consensus had been reached. Negotiations on the financial arrangements to be entered into between the Authority and contractors (NG2/12/Rev.1) had made good progress, and the question of the level of revenues of the Authority was probably the only outstanding issue. On the latter point, the revised proposals by the Chairman of Negotiating Group 2 represented tremendous progress, except with regard to two paragraphs of annex II to the draft convention, relating to the financial terms of contracts (paras. 7 *sexies* and 7 *ter*). It had been widely accepted that the revised proposals of Negotiating Group 2 had improved the prospects for achieving a consensus. With regard to the level of the Authority's revenues, the only real outstanding issue was how the cash capital for the first project of the Enterprise was to be raised (NG2/5/Rev.1). Two basic ideas had been presented on the previous day by the Chairman of the Group in his report to the First Committee. It was perhaps appropriate to say that the industrialized countries bore basic responsibility for ensuring the capabilities of the Enterprise during the preliminary phase of its activities, if only because that was in their own fundamental interest. The proposals made by Negotiating Group 2 in that connexion also substantially improved the prospects for achieving a consensus.

11. Considerable progress had been made during the session with regard to the system of exploration and exploitation of the sea-bed, and especially with regard to the so-called parallel system. There was concern to ensure that the system would be reviewed at the end of an interim period of 20 years, in accordance with article 153, with a view to its possible alteration. Agreement still eluded the Committee on article 153, particularly on paragraph 6, which provided for a moratorium should the review conference fail to reach agreement. He was thus unable to recommend any revision of the present wording of that

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).

paragraph, but he felt that the suggestion included in the revised compromise formula of Negotiating Group 1 (NG1/16/Rev.1) would be a helpful alternative.

12. The working group of 21 had made a detailed examination of the activities of the Enterprise with the aim of maintaining a certain balance in the working of the parallel system between the activities of the contractors and those of the Enterprise. There had been substantial divergences of view on the nature and scope of any priority to be accorded to the Enterprise. On that point also, it would be premature to revise the negotiating text, and the suggestions of Negotiating Group 1 would have to be given further study by the group of 21 at the next session. With regard to the transfer of technology, it was clear from the negotiations in the group of 21 that that issue was closely linked to the activities of the Enterprise. There had been substantial agreement not only to finance the Enterprise, but also to ensure its access to the technology it would need. Although some measure of agreement was emerging as to the contractors' obligation to transfer technology, there was still no agreement on the nature and scope of the technology to be transferred or on the settlement of disputes in that connexion. On the latter point, the group of 21 seemed to favour the idea of a division of jurisdiction between the Law of the Sea Tribunal and commercial arbitration.

13. The question of production policies, which was the subject of article 150, paragraph 1 (g), B, had been considered by an informal group under the chairmanship of the representative of Fiji, which had met under the auspices of Negotiating Group 1. Very interesting proposals were emerging that would make the Authority's production policies more flexible while taking into account the just concerns of the land-based producers of minerals. It was for the plenary to decide whether such proposals could improve the prospects of consensus. The issues of the nationality of applicants for contracts and of sponsorship were complex matters that would affect the anti-dominance provisions; they had been raised but not discussed. The question of reserved sites, which was dealt with in annex II, paragraph 5 *ter*, had not been regulated clearly enough in the negotiating text and would have to be taken up again later. On the subject of joint ventures, the negotiating text was too vague and should contain more specific provisions, especially with regard to joint ventures in which the Enterprise would participate.

14. It was difficult to make definite recommendations on the prospects of all the suggestions presented in the revised compromise formula (NG1/16/Rev.1). That formula certainly represented some progress, which could not however be identified in as concrete a form as the progress made on financial questions. The working group of 21 had not had enough time to negotiate all the issues, and had restricted itself to a discussion of three matters only: transfer of technology, the review conference and priority for the Enterprise. Progress had been made on the first question, but not on the other two. However, even if the revised compromise formula of Negotiating Group 1 did not attract agreement on all sides, it was of value and the possibility of reaching a consensus and of making improvements in a revision should not be excluded.

15. Issues relating to the organs of the Authority had been examined by Negotiating Group 3. That Group had made some consensus suggestions (NG3/6) which he recommended for incorporation in any revision of the negotiating text. He read out two amendments to article 160, paragraph 2 (xxi) and (xxii). Only article 159 would require further negotiation.

16. The legal issues relating to part XI, which had been considered by the Group of Legal Experts, did not appear to raise any major problem. He read out an amendment which the Chairman of the Group wished to make to his suggestions concerning article 188, relating to the submission of disputes to *ad hoc* chambers and to binding arbitration. It would seem that the suggestions from the Group of Legal Experts were

distinct improvements on the negotiating text and offered excellent prospects for consensus.

17. In conclusion, he wished to draw attention to document WG21/1 in which were assembled all the suggestions from the Chairmen of the various negotiating forums dealing with First Committee matters. That document in no way attempted a revision of the negotiating text but represented an effort at clarification which would simplify the revision of part XI in areas where that was considered desirable by the plenary meeting.

18. The PRESIDENT said that it was indeed for the Conference to decide how the proposals or suggestions made by the Committees and their subsidiary organs should be treated.

19. Mr. NJENGA (Kenya) said that he was not entirely in agreement with the Chairman of the First Committee's assessment of the work of Negotiating Group 1. He himself had reported to the First Committee on the negotiations in the Group which had led to the elaboration of document NG1/16/Rev.1, and he thought he was qualified to assess the progress of the Group's work since he had followed its proceedings, as its Chairman, since the very beginning.

20. The Chairman of the First Committee should, in his report, have abided by the conclusions which he (Mr. Njenga) had presented to the First Committee at its 45th meeting. He felt sure that the text elaborated by Negotiating Group 1 would in fact constitute a useful basis for negotiations at the next session in place of the negotiating text, which, as everyone knew, was unacceptable to many delegations as a point of departure towards a compromise solution. Also, document NG1/16/Rev.1 formed an indivisible whole which could only be revised *in toto*.

21. The group of 21 had not produced any report on its activities. However, if it was thought that that group offered the only possibility of reaching an agreement, he was ready to accept the assessment made by the Chairman of the First Committee in that regard, although he felt it was more important to reach a compromise by any available means rather than to observe any particular formalities.

22. He said that he was expressing those views as Chairman of Negotiating Group 1, since they were shared by a number of delegations.

23. Mr. WOLFF (Federal Republic of Germany) said that in spite of the progress achieved, there were many questions on which opinion was still divided or which had not yet been discussed.

24. One matter of great concern to his delegation was that of the composition and the voting procedures of the Council of the Authority. The provisions of the negotiating text on that matter had no sound basis in previous negotiations and were unacceptable for many delegations since they did not provide for adequate representation of all interests, although that was one of the essential conditions for creating an atmosphere of mutual trust and confidence for fruitful co-operation in the institutions that would be set up.

25. The resource policy to be adopted must also be acceptable both to consumers and to producers. Production limitation was a completely new concept, and it was clear that the world community was likely to develop two different resource policies, one for land-based production and another for the resources of the deep sea-bed. There was a risk that such a dual approach would be greatly to the disadvantage of certain countries and would be at variance with the principle of equal treatment. A global resource policy would require global arrangements in the form of commodity agreements in which all major producers and consumers would take part.

26. With regard to the Enterprise, his delegation, like those of other industrialized countries, had gone a long way to meet the concerns of the Group of 77. It was, however, obvious that a transfer of technology to third countries was not directly re-

lated to the viability of the Enterprise. It was to be hoped that the countries of the Group of 77 would, in their turn, give due weight to the concerns of the developed countries in the various sectors when negotiations were resumed at the next session.

27. Mr. KOZYREV (Union of Soviet Socialist Republics) noted with satisfaction the considerable progress made by the First Committee, following intensive negotiations in the various groups, on the issues referred to it. The compromise texts that had been formulated on most of the major questions offered good possibilities for solving even the most complex problems.

28. His delegation had duly noted the important statement made by the representative of Kenya.

29. It had carefully studied the texts submitted to the Conference in document WG21/1 which, despite many shortcomings, still represented a great step forward and could be reflected in the revised negotiating text.

30. The problems raised by developing countries concerning the Enterprise seemed to have been settled satisfactorily, since the Enterprise would be able to commence exploitation of resources as soon as the convention came into force. However, a further request had been made to the effect that technology should be transferred not only to the Enterprise but also to developing countries which would be exploiting the reserved sites. His delegation supported that position.

31. The Group of 77 had asked, in addition, that the transfer of technology should relate also to the metallurgical processing and transport of the minerals extracted. The USSR delegation understood that position and was ready to support it.

32. With regard to the financing of the activities of the Enterprise, further negotiations would be necessary on the various solutions proposed for the financing of the first project. Later, the financing of the Enterprise's activities would be guaranteed by the financial clauses in the contracts concluded. The proposal for the establishment of joint ventures did not seem entirely satisfactory; but if the sponsoring countries insisted that it should be considered, his delegation would be ready to take part in the discussions on it.

33. Irrespective of the detailed content of the various provisions, the system to be adopted must be free from discrimination, for example with regard to the socialist countries, and must not offer undue advantages to the enterprises of capitalist States or to the capitalist States themselves. The USSR had always taken into consideration the proposals of the Group of 77, and believed that the convention should take into account the requirements of all States, irrespective of their economic and social systems. The system of exploration and exploitation to be adopted would be quite ineffective unless all States were afforded the possibility of exploiting the resources of the sea-bed, and unless the right accorded to them to participate in exploitation activities in the area was a permanent right. Active participation by States in activities in the area was an essential condition for the transformation of the régime for exploiting the sea-bed, and was also a guarantee of the effectiveness of the Enterprise and the International Authority.

34. A series of important issues remained outstanding and would have to be negotiated at subsequent sessions.

35. Mr. ROSENNE (Israel) said that the progress made in the negotiations was encouraging. He wished however to confirm all the reservations that his delegation had made during the eighth session on texts emanating from the First Committee, and more specifically on the revision of article 140, paragraph 1, which appeared in document NG1/16/Rev.1 and again in document WG21/1. That revision could prejudice the general acceptance of the convention as a whole.

36. In the report on the work of the Second Committee, on which the Israeli delegation had not yet expressed its views, he had noted various improvements in favour of the geograph-

ically disadvantaged States with regard to the possibility of access to the living resources of the exclusive economic zone. He was not satisfied, however, that the principle of the freedom of the seas was adequately preserved in the zone, and that there was not still room for improvement in part V in that respect.

37. With regard to the report of the Third Committee, subject to the specific reservations that the Israeli delegation had made in the past when it had indicated its preference for limiting the extent of the discretionary powers of the coastal State and for greater reliance being placed on internationally accepted rules and norms, his delegation considered that the new rules for the protection and preservation of the marine environment constituted a general framework that should be completed subsequently by the universal or regional intergovernmental organizations, and were a useful step forward. He drew attention to the recently concluded Barcelona Convention² covering the Mediterranean region, and expressed the hope that all States entitled to become parties to it would ratify it without delay and join actively in the co-operative effort so urgently needed to clean up the Mediterranean and keep it clean.

38. Mr. AL-DAGHMA (Qatar) said that his delegation had proposed an amendment to article 140 which appeared in document NG1/16 and Corr.1, and that several delegations of Latin American and African countries had supported the proposal before it was submitted to the group of 21. In view of the favourable reception given to that proposal to which no delegation had expressly objected, his delegation had expected that that wide measure of support would be reflected in the texts submitted by the Chairman of Negotiating Group 1. On behalf of the group of Arab Countries, he wished to express surprise that the new version of article 140 appearing in document WG21/1 did not take account of the above-mentioned proposal. His delegation would therefore send a written text of the proposal to the President so that it might be taken into account in a later version of the text of article 140.

39. Mr. NAKAGAWA (Japan) said he wished to express his delegation's appreciation of the progress made during the negotiations.

40. With regard to the work of Negotiating Group 1, he regretted that no change had been made in the provisions of article 153 concerning the review conference. His delegation also regretted that the obligation of a contractor to transfer technology to a developing country (annex II, article 5, paragraph 1 (e) in document WG21/1) still remained, since such a transfer should be the subject of bilateral negotiations and not a legal obligation under the convention. The Japanese delegation also considered that disputes relating to the transfer of technology should be settled through binding commercial arbitration. On the basis of that position, it would study the new proposal made in annex II, paragraph 2.

41. With regard to the selection of applicants, his delegation believed that no discrimination should be made between competing applicants. It therefore had some difficulties with article 7, paragraph 4, of annex II.

42. In connexion with the issues considered by Negotiating Group 2, his delegation wished to point out that private enterprises also needed certain financial incentives to venture into that quite new field of mining. The financial obligation of a contractor under the new proposal still appeared to be too high.

43. With regard to the work of Negotiating Group 3, the Japanese delegation regretted that such vital issues as the composition and decision-making mechanism of the Council had not been sufficiently discussed during the session. It

² Convention for the Protection of the Mediterranean Sea Against Pollution, signed at Barcelona on 16 February 1976.

hoped that a thorough discussion on the various outstanding issues would be held at the next session so that a viable compromise might emerge. It approved the new wording of article 161, paragraph 1 (a) and (b) but considered that the number of members to be elected under subparagraph (a) should be increased. Also, the voting procedure should be such as to give adequate protection for the legitimate interests of the countries which would make the largest investments for the exploitation of the sea-bed resources.

44. On the subject of the legal status, immunities and privileges of the Enterprise, his delegation considered that the various matters dealt with in article 12 of annex III should be left to the discretion of the individual States parties concerned. It wished to express its satisfaction at the progress made on the matter of the settlement of disputes; further negotiations would, however, be necessary in that connexion. There still remained a number of hard-core issues which could be resolved only in a spirit of co-operation, and the Japanese delegation would display such a spirit in the future work of the Conference.

45. Mr. SYMONIDES (Poland) said that the results set forth in documents NG1/16/Rev. 1, NG2/5/Rev. 1, NG2/12/Rev. 1, NG3/6 and GLE/2 constituted a step in the right direction and provided better prospects of a consensus, even though his delegation still had a number of reservations on them and particularly on article 153 as it appeared in document NG1/16/Rev.1. The Polish delegation considered that the right of all States to conduct activities in the area should have a permanent character. It also had reservations concerning paragraph 5 *bis* of annex II. It had noted with satisfaction the provisions aimed at preventing monopolization of activities in the area, but still doubted whether they were sufficiently strict to prevent a State or the consortia controlled by a State from gaining a dominant position either in reserved or in non-reserved areas. That problem would require further negotiation.

46. The Polish delegation also considered that States parties which exploited the area, or which sponsored activities in the area, should contribute more than other States to the financing of the Enterprise. It seemed to his delegation to be just and reasonable that countries which took the main share of benefits from activities in the area should also undertake the financing needed to ensure the viability of the Enterprise.

47. Mr. ZEGERS (Chile) said that the provisions in document WG21/1 on the system of exploitation, the financial arrangements and the organs of the Authority constituted an indivisible whole. They were the result of the work of the last two years since the preparation of the negotiating text, and represented a considerable step forward since they improved the prospects of reaching consensus on all the financial arrangements, the transfer of technology, the review conference, the settlement of disputes etc. That progress should be reflected in a revision of the negotiating text on the basis of document WG21/1; otherwise, the Conference's chances of reaching agreement would be jeopardized. The revised text would not be a final revision as envisaged in document A/CONF.62/62³ on the organization of work, but would be an improved negotiating document which should be considered again at the next session, probably by the group of 21.

48. In reply to the remarks made by the representative of the Federal Republic of Germany on resource policy, he wished to direct the attention of that speaker to the declaration of principles on the work of the Conference, to the General Assembly resolutions on the matter, to the reports of the Sea-Bed Committee adopted with the agreement of the Federal Republic of Germany, and to the negotiations on article 9 and on article 150, in which the Federal Republic of Germany had

also participated. The representative of that country had forgotten above all that the sea-bed beyond the limits of national jurisdiction was part of the common heritage of mankind. With reference to Mr. Wolff's comments on differences between the system of exploiting the sea-bed and the system of exploiting land-based natural resources, he observed that if the Federal Republic of Germany was prepared to sign an agreement on commodities forthwith—a solution that was already envisaged in the text—such differences would no longer exist.

49. Mr. EVENSEN (Norway) said he thought that document WG21/1 was a substantial improvement on part XI of the negotiating text, and marked the culmination of two years of effort. Nobody could pretend that it was a consensus text or a final text, but, as it provided an improved basis for future negotiations, it could usefully be included in a revised version of the negotiating text in order to give concrete expression to the progress achieved.

50. Mr. SAMPER (Colombia) said that the work of Negotiating Group 1 was part of an indivisible whole and could well lead to a consensus.

51. With regard to the provisions of article 159, his delegation wished to point out that, in the absence of a definition of "special interests", it would be difficult for certain developing countries to become members of the Council, whereas others would be privileged. In that respect, his delegation shared the view of the Group of 77 that the principal criterion should be equitable geographical distribution and that development was the "special interest" *par excellence*. Since it had already been agreed that certain special interests should be protected, due attention should be given in future negotiations to countries which were potential producers of minerals and also to countries of origin of migrant workers, as had been proposed by Argentina and Portugal respectively. Those questions should be given priority at the resumed session. Also, a strengthening of the principle of the rotation of seats among the members of the Council, at least with respect to developing countries, would help to promote a consensus.

52. Mr. HAMAD (United Arab Emirates) said that his delegation attached particular importance to article 140 and also to the draft amendments to that article which had been submitted by 20 countries and supported by the Group of 77 but had not yet been taken into account. The delegations sponsoring those amendments had reservations concerning the current wording of article 140 and hoped that their amendments would be included in it. Since only one delegation had objected to the amendments while the whole of the Group of 77 had supported them, their inclusion should not create any obstacles to the adoption of the convention.

53. Mr. RICHARDSON (United States of America) said that document WG21/1 had proved of value in advancing the work. Some progress had been made in the direction of a consensus, although some steps backwards had also been taken. However, it was the progress which had predominated, and the United States delegation considered that, in spite of the many remaining obstacles, the amendments in question should be included in their entirety in a revised negotiating text.

54. Mr. BRENNAN (Australia) said that all three Committees had made great progress during the session. The progress achieved by the First Committee in particular could be measured by comparing the status of discussions at the time when the negotiating text was produced with the current status of discussions. As a result of the improved quality of the documentation, negotiations in the various groups of the First Committee had taken place under the best possible conditions and real issues were being tackled. The establishment of the group of 21 had had a most welcome effect on the negotiations.

³ 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).

55. Referring to the remarks made by the representative of the Federal Republic of Germany on production policy, he said that he would rather have stressed the fact that production policies as envisaged in the draft convention would place the emphasis on the efficiency and the stability of the markets for products obtained from the exploitation of the area and sold at prices that would be remunerative for the producer and equitable for the consumer, and also the fact that the principal instrument of those policies was the development of commodity agreements, production limitation being merely a temporary measure.

56. He considered that document WG21/1 provided a basis for discussion that was superior to the assemblage of documents which sprawled through volumes VIII¹ and X³, and should for that reason be adopted.

57. Mr. BEESLEY (Canada) said that document WG21/1 represented substantial progress and should be incorporated in the negotiating text on the conditions proposed, i.e., without the provisions contained therein being regarded as final.

58. In the opinion of his delegation, considerable progress had been made on the transfer of technology and, for the first time, on processing technology, the financing of the Enterprise and financial arrangements for contractors. There had also been some clarification of and additions to the provisions concerning the Authority, the secretariat and the settlement of disputes.

59. Mr. CASTAÑEDA (Mexico) said that it was essential to consolidate the progress made by Negotiating Group 1 by incorporating it in a revised version of the negotiating text. Otherwise, negotiations would be continued on the basis of vague proposals, as had occurred at Caracas. It was true that consensus had not been reached on all the proposals, but, as a whole, they constituted an improved basis for negotiation though they could not be regarded as the final text envisaged in document A/CONF.62/62. The proposals of the Chairman of Negotiating Group 1 constituted an indivisible whole, whose balance would be destroyed if certain elements were removed from it. Indeed, the five reports submitted constituted a single whole and should be inserted in the text in order to give a better over-all view of the negotiations.

60. Mr. KE ZAISHUO (China) observed that the First Committee had elaborated a series of compromise texts on the complex issue of the system of exploring the area and exploiting its resources. His delegation considered that that issue, like the question of financial arrangements, should be settled as part of a package deal. With a view to reaching a consensus, it had been decided to apply provisionally a parallel system of exploitation on the understanding that, during the provisional period, the necessary conditions would be created to enable the legal entity to participate in the exploitation; and it had also been decided to provide sufficient guarantees that the Authority and the Enterprise would have the necessary technology and resources. Nevertheless, that issue still gave rise to many difficulties. With regard to the transfer of technology, it was not clear how the Enterprise was to be guaranteed the necessary technology to exploit, process, refine etc. products recovered from the deep sea-bed. With regard to the financing of the Enterprise, there was the problem of the charges to be paid to the Authority by the contractors. Lastly, provision had to be made to ensure that the Enterprise would have priority in the exploitation of those resources (article 150 *bis*). On that point, his delegation shared the views expressed by the developing countries and was favourably inclined to the position of the Group of 77.

61. On the other hand, his delegation thought that document WG21/1 came close to a consensus solution and should be included in a revised version of the negotiating text. It wished to point out, however, that the controversial issue of the compo-

sition of the Council had not been considered at the current session, and it hoped that that issue would be solved at the next session, since it was part of the package deal to be elaborated by the First Committee. The Committee still had much to do to resolve those complex issues and, though his delegation regretted that more positive results had not been achieved, it hoped that by joint efforts an agreement acceptable to all could finally be reached.

The meeting was suspended at 6.40 p.m. and resumed at 7.10 p.m.

62. Mr. DE SOTO (Peru), speaking as co-ordinator of the contact group of the Group of 77 for the First Committee, said that the Group supported the Qatar amendment to article 140 and hoped that the plenary would take it into account.

63. Thanks to the group of 21, it had been possible to consider, sometimes at a technical level, all the First Committee issues. It would be useful to keep that group in being or to establish a similar group for the next session.

64. Mr. DE LACHARRIÈRE (France) said that, on many points, document WG21/1 contained formulations which were not acceptable. On other points it contained some distinct improvements which were not, however, sufficient to make the provisions acceptable. Much work had still to be done, for example, on the financial terms of contracts, the financing of the Enterprise, article 159 and the settlement of disputes. On some other points—for example, the rules of procedure for the review conference, the extension of the Enterprise's activities and its method of financing—the document represented a step backward as compared with the negotiating text.

65. However, if it were necessary to express an over-all judgement on that text, which his delegation had had little time to study, it could be said that it constituted an advance in the negotiations and could therefore be substituted for the earlier text as a point of departure for future discussions.

66. Mr. WISNOEMOERTI (Indonesia) said that although his delegation could not endorse document WG21/1 in its entirety and reserved its position on certain articles, it thought that the document reflected some progress and should therefore be inserted in a revised text. On the other hand, it did not share the views of the representative of the Federal Republic of Germany regarding production policy.

67. Mr. NANDAN (Fiji) said that the text contained in document WG21/1 was the culmination of long and arduous efforts by all delegations. The Conference should not allow itself to be dominated by any single person, but should study the proposed text with all the attention it deserved and should make its own assessment.

68. His delegation agreed with other delegations that the proposals contained in document WG21/1 were indissolubly linked and should all appear in a revised version of the negotiating text. The new text constituted an improved basis for further negotiations and offered better prospects of a consensus than the negotiating text in its existing form. He was obliged, nevertheless, to express a reservation on article 156, paragraph 3, concerning the seat of the Authority, a question which the Conference should consider before the end of the eighth session.

69. Mr. JAGOTA (India) said that he, too, thought that document WG21/1 constituted a step forward and offered a substantially improved prospect of a consensus. It should thus be included in a revised version of the negotiating text for further improvement. That would be sufficient in itself to justify convening of a resumed session in 1979.

70. Some significant progress had been made on important aspects of the work, such as the elaboration of the concept of a parallel system of resource exploitation, of arrangements to ensure that the system would operate effectively from the outset, of an acceptable system for the settlement of disputes and of machinery to regulate sea-bed mining in the interests of

mankind as a whole. Other questions which had been usefully discussed included financial arrangements, the technological and financial viability of the Enterprise, the transfer of technology, the priority to be given to the Enterprise in sea-bed mining, the review of the parallel system after 20 years, and other issues.

71. The Group of 77 had not yet considered document WG21/1, but the document undoubtedly constituted a step in the right direction and Governments should examine it with all the attention it deserved.

72. Mr. GHELLALI (Libyan Arab Jamahiriya) said that the reports of the three Committees contained a number of negative aspects and he hoped that subsequent negotiations would help to eliminate them.

73. The Organization of African Unity had clearly indicated in an official communiqué that the negotiating text should constitute the basis for negotiations until the industrialized countries had satisfied certain conditions.

74. Since the majority of the participants were in favour of including document WG21/1 in the negotiating text and since his delegation did not wish to hold up the negotiations, it would not object to the circulation of a new revised composite text reflecting the progress made by the seven negotiating groups. In accordance with document A/CONF.62/62, the new revised text should include all the articles of the existing negotiating text, including those which the seven negotiating groups had not amended, with the exception of article 156 (WG21/1) on the establishment of the Authority and its seat, a question which should be examined separately. His delegation was unable to accept the idea of publishing only certain parts of the negotiating text but would not object to the circulation of a revised composite text.

75. Mr. ARCULUS (United Kingdom) said that he too thought that some progress had been made, although there were still some fundamental issues to be resolved such as the financial arrangements and production limitation. The Conference would, however, take up its consideration of those matters at the point where it had left off and the texts which had been produced would make a useful contribution in that regard.

76. Mr. SALIBA (Malta) said that there should be some tangible indication that progress had been made.

77. Document WG21/1 had been described by many speakers as constituting a whole whose component elements were balanced. He wished to point out that some of its elements had never been discussed and consequently did not form part of such a balance. One example was article 154, which had been renumbered article 156, paragraph 3. It would be wrong to give the impression that those provisions had been considered again and accepted. He hoped that that matter would be settled before the end of the session and he reserved the right to revert to the subject later.

78. Mr. BRECKENRIDGE (Sri Lanka) congratulated the President on the way in which he had got round the problem presented by paragraph 10 of document A/CONF.62/62, and had had document WG21/1 accepted as a basis for future work.

79. He agreed with the Norwegian delegation that the document constituted a valid basis for future work and illustrated the useful role played by the various groups in advancing the work of the Conference.

80. He did not think it would be appropriate to comment on the substance of that document, as the President had suggested that delegations might do. If a discussion were held on the substance, the records would reveal all too clearly the considerable differences of opinion which still existed.

81. The PRESIDENT said that he had not attempted to get round the provisions of paragraph 10 of document

A/CONF.62/62. He had simply stated that, in view of the limited time available to the Conference, a different approach was needed, and he had clearly indicated that the revised texts could always be amended. He had not suggested, either, that delegations might raise questions of substance. The Conference in plenary meeting was merely required to decide to what extent the document produced during the session could constitute a new basis for negotiations.

82. Mr. RATTRAY (Jamaica) said that the work of the Conference formed part of a gradual process that had begun in 1974. The text which the Conference was considering did not result from the negotiations at the eighth session alone, but from the whole process of trying to reach consensus on the various provisions contained in the text. The issues dealt with were closely interlinked. In order to reach an over-all consensus, it was necessary first to identify the hard-core issues, particularly those within the mandate of the First Committee, which could be solved only if they were tackled in a global context.

83. The negotiations at the eighth session had made the informal composite negotiating text more intelligible and had provided an opportunity to consider its main elements, such as the system for exploitation of resources, the financial arrangements of the Authority and the Enterprise and the financial terms of contracts. Different issues had reached different stages of maturity, and the Conference should take stock of the situation before continuing the negotiations.

84. Progress had been made with respect, *inter alia*, to the question of the transfer of technology, financial arrangements (see NG2/5/Rev.1), the anti-dominance clause and the priority to be accorded to the Enterprise in sea-bed mining; but there were still major difficulties with regard, for instance, to the application of the provisions concerning the reserved area and the non-reserved area, attributable net proceeds, the scale of charges etc.

85. In spite of its reservations, his delegation was in favour of issuing a revised negotiating text in order to stimulate the negotiations and help resolve the outstanding issues, it being understood that such a document would not commit the Conference but would simply constitute a basis for negotiation. His delegation was ready to consider any provision, including article 153, paragraph 3, at any appropriate time but on condition that the context for the discussion was identical for all articles, and that no dual standards were applied. In addition, any amendment or revision must command widespread and substantial support in the Conference and offer a substantially improved prospect of a consensus, as stated in paragraph 10 of document A/CONF.62/62.

86. Mr. MARSIT (Tunisia) said that document WG21/1 constituted a distinct advance and he agreed with the speakers who advocated its inclusion in the negotiating text. The issuance of a new revised text would make it possible to move forward towards the elaboration of a convention that would serve the interests of all peoples and encourage co-operation among them.

87. He requested that the Qatar proposal should be considered and included in the revised negotiating text.

88. Mr. ENGO (Cameroon) wished to assure the representative of Malta that he had never said that document WG21/1 constituted a balanced whole. He had merely indicated how the various proposals advanced could be combined in a single document and had refrained from making any value judgement on any aspect whatsoever.

89. Mr. SALIBA (Malta) said that his comments had not been addressed to the Chairman of the First Committee.

90. Mr. CHANG-CHOON LEE (Republic of Korea) said that he was in favour of revising the negotiating text on the basis of document WG21/1, on condition that further intensive

negotiations were conducted with a view to settling the outstanding issues. His delegation was anxious that a sea-bed mining régime should be established very rapidly and that exploitation should begin as soon as possible in the interests of all mankind and more particularly of the developing countries. Possible losses incurred by countries producing land-based

minerals could be compensated for from the revenues of the Authority if the Conference agreed to establish machinery for that purpose. It should give favourable consideration to that idea in the future negotiations.

The meeting rose at 8.05 p.m.

115th meeting

Friday, 27 April 1979, at 12.30 p.m.

Chairman: Mr. H. S. AMERASINGHE.

Organization of future work of the Conference

1. The PRESIDENT said that he wished to inform the plenary meeting of the recommendations of the General Committee concerning future work. The General Committee recommended that the Conference should meet in resumed session in New York for a period of six weeks from 16 July to 24 August 1979. The first three days of that period would be reserved for meetings of the Group of 77 or its contact group and the resumed session would open formally on 19 July. From 16 to 18 July, any other group wishing to meet would be provided with the necessary facilities.
2. The General Committee had decided that at the resumed session priority should be given to First Committee matters, without precluding consideration of other matters falling outside the First Committee's competence. The General Committee had also agreed that, following the discussion of First Committee matters and in the period commencing 6 August, the Third Committee should be given an opportunity of meeting to consider further the provisions of part XIII of the informal composite negotiating text¹ in the light of negotiations in the First and Second Committees.
3. The General Committee had agreed that the existing negotiating structures—including the working group of 21 for First Committee matters—should be maintained during the resumed session. There had been some expression of hope that the group would function in a more informal atmosphere than hitherto and that its composition would permit an appropriate form of rotation.
4. Finally, the General Committee had been informed that arrangements would be made for the consideration of all outstanding issues, including those already referred to in paragraph 6 of document A/CONF.62/62.² Those issues included the preamble and final clauses, as well as the proposals made by Peru, Nepal and Portugal.
5. He said that if he heard no objection, he would take it that the plenary approved the recommendations of the General Committee.
It was so decided.
6. Mr. YOLGA (Turkey) pointed out that the President had alluded to only one of the three issues identified in paragraph 6 of document A/CONF.62/62.
7. The PRESIDENT said that it had not been his intention to assign lesser status to the issues of the régime of islands and enclosed or semi-enclosed seas.

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 FIRST COMMITTEE (*continued*)

8. Mr. RICHARDSON (United States of America) said that he wished to make a number of additional comments to supplement his delegation's statement on the previous day concerning the readiness of the United States to have the work of the various First Committee negotiating groups incorporated in any revision of the negotiating text. In the view of his delegation, good progress had been made in those groups in a number of areas, including the difficult matter of the working of the parallel system in annex II, and the means of making technology available to the Enterprise and ensuring the viability of the Enterprise as a commercial operator within the framework of annex II. Progress had also been made in dealing with the issue of the composition of the Council, although the most difficult issues concerning numbers and voting remained unsolved. The Group of Legal Experts had made an important contribution to the improvement of the system of dispute settlement under part XI of the negotiating text.
9. He was compelled, however, to draw attention to a number of areas in which his delegation continued to have serious difficulties with the texts in document WG21/1, and he wished to emphasize that the list was illustrative rather than exhaustive. His delegation still had some difficulty with article 140, which would unwisely tax the Authority with a political burden which might prove overwhelming. His country's steadfast objection to the possible moratorium on sea-bed mining which could be invoked under article 153, paragraph 6, at the time when the world would have the greatest need from minerals was also well known, and he simply wished to restate that objection. His delegation was also concerned with a number of provisions in annex II, including certain remaining problems connected with the transfer of technology. In addition, it believed that further work was needed on paragraph 5 *bis* concerning the question of the relationship of the Enterprise with other applicants. An absolute priority for the Enterprise over such applicants was a matter which required much more careful consideration when the issue of the availability of mine sites under the production ceiling was considered.
10. There had been considerable progress in Negotiating Group 2 towards reaching an understanding of the complex financial requirements of the deep sea-bed mining industry and of the possible tax régimes which would be fair both to the industry and to the Authority. A consensus had not yet, however, been achieved on financial arrangements. An acceptable

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).

²*Ibid.*, vol. X (United Nations publication, Sales No.E.79.V.4).