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76th Plenary meeting

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76th meeting

Friday, 17 September 1976, at 4 p.m.

Chairman: Mr. H. S. AMERASINGHE (Sri Lanka).

Reports by the Chairmen of the Committees (concluded)

1. Mr. AGUILAR (Venezuela), Chairman of the Second Committee, concluded his reading of his report on the work of the Second Committee (A/CONF.62/L.17).

2. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, said that his report (A/CONF.62/L.18) was based on three comprehensive oral reports he had made on the informal negotiations conducted at the Committee level and at the level of negotiating groups on all three main items before the Committee. Those oral reports had been extensively discussed at four formal meetings of the Committee. Most speakers had expressed the view that the reports of the Chairman were comprehensive, accurate and objective and that they adequately reflected the informal deliberations and negotiations which had taken place during the session. In document A/CONF.62/L.18, he had tried to take account of the views expressed by delegations and to present his own personal evaluation with regard to the issues under consideration.

3. He stressed that the procedure for negotiations agreed upon by the Committee had proved to be satisfactory from the standpoint both of full participation by all interested delegations and of efficiency. The Committee had agreed to adopt a selective and restrictive approach in determining the main issues to be considered at the current session. At the same time, it had tried to operate on the basis of common sense and flexibility in defining the key issues and other related items. Another significant feature of the Committee's deliberations had been the general assumption that the revised single negotiating text constituted a viable basis for negotiation and compromise. He was pleased to report that the Committee had made important progress in its negotiations on the elaboration of draft articles on the three items allocated to it and had gone a long way since the second session at Caracas. Throughout the current session his primary intention had been to harmonize different views, avoid deadlock in the negotiations on critical issues and seek improvements in the revised single negotiating text.

4. The negotiations on the protection and preservation of the marine environment had been focused on the key issue of pollution from vessels. Special attention had been given to the problems relating to the competence of coastal States to establish laws and regulations for the prevention and control of pollution from vessels in the territorial sea. In that connexion, the Committee had examined concurrently article 21, paragraph 3, of part III of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1)¹ and article 20 of part II (*ibid.*). The Committee had subsequently studied the legislative competence of coastal States to prevent and control pollution from vessels in the economic zone and in special areas within the economic zone. During the discussions, different views had been expressed on the relationship between the two articles he had referred to. It would be necessary to achieve substantive co-ordination between those two provisions of the revised single negotiating text.

5. The Committee had considered other important views relating to vessel-source pollution. About 142 amendments

had been submitted to 25 articles, records of which would be maintained for the Committee's future work. Some of the amendments had been adopted while others had been withdrawn or were still outstanding. Most of the proposals had been intended to clarify different provisions of the revised single negotiating text and to remove ambiguities. His report contained a detailed account of the positive results which had been achieved and the critical items which needed further negotiations. In addition to the major problem of harmonizing parts II and III of the negotiating text with respect to coastal State jurisdiction in the territorial sea, other questions still needed to be solved with regard to some enforcement measures, including civil or criminal proceedings to be taken by the port State, the universal character of port State jurisdiction, flag State pre-emption (article 38), the degree of acceptance needed for the establishment and application of international rules and standards and other outstanding items, some of which had not been considered owing to lack of time. It was his firm belief, however, that an effort should be made to find generally agreed compromise formulae based on the revised single negotiating text, the results of the negotiations at the current session and the further efforts which would be made at the following session.

6. The report contained a very detailed account of the negotiations on the critical issue of marine scientific research, with special reference to the conduct of such research in the economic zone and on the continental shelf. That issue was of crucial importance not only for the Third Committee but for the outcome of the Conference as a whole. There had been three main trends on that issue, namely, the concept of a full-consent régime, the concept of a so-called mixed régime (consent for resource-oriented scientific investigation and notification of fundamental research projects), and a more flexible approach amounting to the establishment of a régime based on the principle of consent but with some exceptions and refinements. At one point during the negotiations it had become apparent to him that the Committee was moving in divergent directions from the revised single negotiating text, furthering the polarization between the existing trends. In order to avoid a deadlock and to offer a new option for possible compromise, he had taken the initiative of submitting a compromise "test proposal". His primary intention had been to ensure an appropriate balance between the principle of consent of the coastal State for the conduct of marine scientific research activities by other States or international organizations in its economic zone or on its continental shelf and the rights and interests of the coastal State. While recognizing that the coastal State had jurisdiction to regulate, authorize and conduct marine scientific research within its economic zone and on its continental shelf and that marine scientific research activities had to be carried out with the consent of the coastal State, that formula provided at the same time that the coastal State should normally grant such consent, with some exceptions explicitly indicated in the text. In order to substantiate the principle of good faith, coastal States would undertake to establish rules and procedures ensuring that such consent would not be delayed or denied unreasonably. The proposal had been subjected to very extensive discussions, in which 42 delegations had participated. On that issue, the Committee had come very close to the limits of possible concessions where political decision was the only meaningful solution. At an early stage of the next session all would have to make an effort to reach a compromise. Once that fundamental problem was solved, the

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8).

resolution of the remaining problems regarding marine scientific research would be easier.

7. The Committee had held several meetings on transfer of technology. Although some problems were as yet unsolved, there was a possibility of compromise.

8. Some positive results had been achieved at the current session. He hoped that at the next session the Committee would start from where it had left off at the end of the current session. It would be a great set-back if the progress which had been made, however modest it might be, were to be lost and if negotiations on some critical issues were to proceed from initial and extreme national positions. At the next session the Committee would have to follow a comprehensive approach in the negotiations on different issues with the main objective of elaborating a well-balanced and viable convention on the law of the sea which would enjoy universal recognition. He felt that the most appropriate procedures for achieving those objectives would be based on the principles of mutual respect of interests and consensus.

Report by the President on the informal plenary meetings on the settlement of disputes

9. The PRESIDENT recalled that, at its 65th plenary meeting, the Conference had decided that the negotiations on part IV of the informal single negotiating text (see A/CONF.62/WP.9/Rev.1)¹ should be conducted in informal plenary meetings, adopting the same negotiating procedure as for the other three parts of the text. In accordance with that decision, an article-by-article discussion of the main chapter on settlement of disputes had commenced on 3 August 1976 and continued until 14 September 1976. Much ground had been covered at those meetings and there had been a total of 745 interventions with over 140 substantive informal suggestions for draft texts.

10. The discussion of section 1 of the text, covering the first six articles of part IV, like that on the rest of the text, had been most constructive, though less controversial than on some of the other issues. Section 2, dealing with the compulsory binding procedures, had been far more controversial, especially in relation to the questions of the choice of forum (article 9), the competence or jurisdiction of a particular forum (article 10), provisional measures (article 12), access of parties (article 13), the release of a detained vessel (article 15) and the exceptions relating to the exercise of certain rights of coastal States in the exclusive economic zone (article 18). Although there had been a near-consensus on the deletion of certain provisions, such as that relating to local remedies (article 14), the reason for their deletion had not always been the same.

11. As the negotiations had continued until 14 September, there had been insufficient time to revise the text before the end of the current session, owing to the need for full and proper assessment of the negotiations and careful consideration of the numerous texts proposed. Accordingly, the revision would be completed within the next two to three weeks and the revised single negotiating text on settlement of disputes would be made available to delegations through the normal distribution channels.

12. It would be premature to attempt in any way to summarize the trends of the discussions or to assess what should be the final content of the negotiating text. He would refrain from dealing with the substantive issues, which would of course be fully reflected in the revision of the text, as had been done by the Chairmen of the three Committees when they had produced revised texts of parts I to III.

Tribute to the Amphictyonic Congress of Panama (A/CONF.62/L.15)

13. Mr. TREDINNICK (Bolivia), speaking on behalf of the group of Latin American States, introduced the draft tribute

(A/CONF.62/L.15) commemorating the one hundred and fiftieth anniversary of the Amphictyonic Congress of Panama, held in 1826 at the inspiration of the Liberator, Simón Bolívar. He recalled that at its second session the Conference had paid a tribute to Simón Bolívar on the anniversary of his birth.

14. The Amphictyonic Congress of Panama had been held at a critical period in history with a view to seeking a union of the Latin American republics because, up to that time, it had appeared that history had been the exclusive privilege of the then existing great European Powers.

15. The purpose of the Congress of Panama and that of the Third United Nations Conference on the Law of the Sea were remarkably similar, and that fully justified a tribute to the Congress by the Conference. The Conference was currently preparing a convention that would govern the exploitation of the resources of the sea. Similarly, in the nineteenth century, Bolívar had sought to establish at Panama a declaration of principles for a modern continental international public law that would govern the life of the nations and define the law of the sea for purposes of navigation, trade and arbitration for the settlement of disputes. All the peoples of the world were now gathered in a vast and complex Conference, just as the peoples liberated by Bolívar and those of the other independent nations of Latin America had gathered at Panama, to define and lay down laws and duties relating to the sea for all States, coastal or land-locked, to ensure the equitable use of the seas and their resources and to guarantee peace and maritime good-neighbourliness through a system of peaceful settlement of disputes.

16. The group of Latin American States hoped that the draft tribute to the Amphictyonic Congress of Panama would be adopted by acclamation.

The draft tribute was adopted by acclamation.

Report of the Credentials Committee (A/CONF.62/49)

17. The PRESIDENT said that since the submission of the report of the Credentials Committee, credentials had been received from Guatemala, Kenya, Pakistan, Peru and Zambia. Appropriate amendments would be made to the report. In addition, the appointment of the representatives of Lesotho and Mali had been communicated to the Executive Secretary of the Conference by note verbale, and appropriate entries would be made in paragraph 5 of the report. If there was no objection, he would take it that the Conference approved the report of the Credentials Committee.

It was so decided.

Organization of the work at the next session of the Conference

18. The PRESIDENT said that the General Committee had reached a clear consensus with regard to the organization of the next session, subject to certain preferences which had not been strenuously maintained and slight nuances which did not materially affect the Committee's recommendations.

19. There had been a consensus that the next session should be held after a sufficient interval to enable delegations not only to discuss matters thoroughly within their own Governments but also to have the opportunity of consulting with other Governments. That requirement was fully met by the proposal of the Group of 77 that the period during which the session should be held should fall between 16 May and 31 August 1977. That period had been acceptable to the General Committee.

20. As to the duration of the session, the Group of 77 had preferred a session of six to seven weeks. Others had felt that

a session of eight weeks would be necessary. As a compromise, he had suggested that the Conference should plan for a seven-week session with the possibility of extension into an eighth week. He suggested that the session should start on 23 May. A seven-week session would therefore last until 8 July and an eight-week session until 15 July.

21. With regard to the question of the venue, the Group of 77 had reached a consensus that it should be New York. The countries in that Group had stressed that they had given every thought to the preference expressed by many countries for Geneva and also to the principle that there should be alternation of venue between New York and Geneva, but that there had been decisive considerations which had left them no alternative but to select New York. Almost all of those countries had missions in New York and could draw on the staff and facilities of those missions not only for reasons of economy but also to ensure effective participation in a session which they had felt would be the most decisive of all. The Eastern European States had expressed a preference for Geneva but had been willing to accommodate the wishes of the Group of 77. The group of Western European and Other States had proceeded in the belief that a general preference had been indicated for Geneva and had therefore agreed on that venue. It was his impression, however, that they had not pressed their preference in the light of the reasons given by the Group of 77 for preferring New York. The members of the European Economic Community had also stated that they preferred Geneva not merely because it was more convenient but also because they attached importance to the principle of alternation between Geneva and New York. The Community members had, however, appeared to acquiesce in the choice of the Group of 77. The United States had been willing to go along with the general consensus. The General Committee therefore recommended that the next session should be held in New York.

22. There had been a full discussion of the organization of work during the next session and the possible arrangements for intersessional work, and he interpreted the consensus of the General Committee as follows.

23. The first two or three weeks of the session would be devoted primarily to the consideration of First Committee issues so that that Committee could bring its work as far as possible into line with the stage reached in the Second and Third Committees. That was an absolute necessity if the proceedings were to be treated as one conference and not three conferences. Every resolution adopted by the General Assembly had stressed the unity of the subject-matter.

24. It had also been agreed that participation in the First Committee's negotiations should be at the highest level, meaning heads of delegations. That was also an indispensable requirement. Those participating should have plenipotentiary powers and come ready and equipped with clear instructions from their Governments, especially where political decisions had to be taken.

25. While First Committee matters were being negotiated during the first two or three weeks of the session, there would be no objection to other matters being discussed, provided that there was no interference with the negotiations in the First Committee and that the level of participation desired in that Committee was not affected. After the initial two or three weeks, the Second and Third Committees would resume their work, subject to the proviso that priority for the First Committee during the initial two or three weeks would not necessarily preclude the transaction of other business.

26. During the period when the Second and Third Committees would be conducting their negotiations, the First Committee would also be required to continue its work, as they would at that stage all be proceeding in parallel. It would also be necessary to continue work on the dispute settlement procedures in the revised single negotiating text and to organ-

ize a formal discussion in plenary of the Secretariat paper on the preamble and final clauses (A/CONF.62/L.13) to enable a first single negotiating text on that question to be prepared.

27. There had been two other suggestions, which had not been so much matters of organization as targets and objectives at which the Conference should aim. It had been clearly understood that in regard to those suggestions there was no intention to proceed by vote but rather by consensus. One was that at the end of the fifth or at the latest the sixth week the President, in association with the Chairmen of the three Committees, should prepare a single informal consolidated or composite negotiating text. While it had been suggested that others should be consulted, he urged that the company he chose should be left to the discretion of the President, who would ensure that it would be highly respectable. The second suggestion was that the Conference should, in the last week, prepare a draft convention and have it ready as the final result of the work of that session. That would naturally depend on the rate and nature of the progress achieved in the three Main Committees.

28. Some delegations had expressed reservations regarding the suggestion that outstanding issues should be the main focus of attention. Their concern was a legitimate one, and it must be agreed that any delegation which considered a certain issue to be of importance to it should have the right to bring it up in the appropriate Committee and that the Committee must give it treatment no different from that given to what had been regarded as outstanding or key issues.

29. As a means of preparing adequately for the next session by resolving existing differences or narrowing them as much as possible, and in the search for genuine compromise, it had been proposed that arrangements should be made for intersessional work. It had been definitely understood that intersessional arrangements did not mean the convening of an informal intersessional meeting of the Conference as a whole, much less a formal meeting of that type. It had also been agreed that the Chairmen of the Committees would be free to ask for intersessional meetings of interested parties to deal with special problems, but that the initiative of doing so would also be open to any participant in the Conference. There had, however, been two conditions: first, the proposal to organize intersessional negotiations should be communicated to the Secretariat with a clear indication of the agenda and other details; the Secretariat would inform all States participating in the Conference of the proposed arrangements so that they could decide whether they wished to join in the work; and secondly, the results of those intersessional negotiations should be communicated to the Secretariat so that it could in turn bring them to the notice of all participants in the Conference.

30. Intersessional meetings should, as their description suggested, be held before the next session. The results should likewise be communicated well in advance to all members participating in the Conference so that they would be prepared to consider them from the very beginning of the session. That would indicate that March would be the most appropriate month for the intersessional negotiations. It was because of the need to allow time for the results of the negotiations to be communicated to all participants that he had suggested 23 May as the date on which the next session should begin. Private or restricted negotiations were not precluded, but they would not receive facilities from the Secretariat.

31. The main reason for preparing what would appear to be so detailed a scheme was to avoid expenditure of time during the next session in procedural discussions, which tended to be protracted. At the same time, those proposals did not contemplate a rigid or inflexible scheme. Although they were essentially indicative in character, he hoped that there would be no attempt to change them beyond recognition, as that would destroy their essential purpose. What the General Committee

was seeking to do was to provide the best possible arrangements for bringing the Conference's efforts to fruition by the end of the next session.

32. He took the opportunity to repeat his earnest plea that, whatever national legislation was on the statute-books or in contemplation, States should refrain from taking unilateral action which would shatter all hope of reaching general agreement. There was no interest so exigent and so vital that it would be prejudiced by patience.

33. He then read out the following summary of the General Committee's recommendations:

- i) There was consensus that there should be a session in 1977, in New York.
- ii) The session should be of seven weeks' duration, providing for the possibility of an eighth week.
- iii) The session should start on 16, 23 or 30 May 1977.
- iv) The first two or three weeks of the session should be devoted to First Committee matters to enable it to reach the same stage of progress as the Second and Third Committees. That would not preclude other meetings during that period as long as they did not conflict with the work of the First Committee, particularly with heads of delegations participating in the work of the First Committee.
- v) For two or three weeks thereafter the Second and Third Committees would continue their work and the First Committee would do so too.
- vi) It would also be necessary to hold discussions in informal meetings of the plenary on the settlement of disputes.
- vii) There should be a formal debate in plenary on the preamble and final clauses.
- viii) Meanwhile, the revision of the text on the settlement of disputes would be effected so that it would be brought into line with the other three parts of the revised single negotiating text.
- ix) At the end of the sixth week, the President with the Chairmen of the Committees, adopting the collegiate method, would prepare an informal single composite text. On the basis of that text, the Conference should in the last week prepare a draft convention on which it should act, if possible, by consensus and without resorting to a vote.
- x) The Chairman should take the initiative in arranging informal consultations or negotiations intersessionally, but delegations could do so too. The results of such intersessional work should be communicated to all participants.
- xi) The Secretariat should be informed well in advance of intersessional consultations, so that the necessary arrangements could be made.
- xii) There would be no informal meetings of the Conference intersessionally.

34. Mr. ZEA (Colombia) said that, while his delegation could agree with the suggestion that the next session of the Conference should begin on 23 May 1977, it had been satisfied with the consensus reached in the General Committee that it should begin on 16 May, because delegations should have as much time as possible between the end of the sixth session of the Conference and the beginning of the thirty-second session of the General Assembly in order to use their staff for other work.

35. With regard to the proposal that two or three weeks of the session should be devoted to First Committee matters, while his delegation appreciated the need for progress in that Committee, the proposal in question did not state clearly that the Second and Third Committees would continue to work during that period. He believed that the regular rhythm of work of the other two Committees should be maintained, because no great progress had been made in those bodies. His

delegation did not share the optimism reflected in the report by the Chairman of the Second Committee because, while that Committee had been close to agreement on some issues, there were still great differences on others. In his view, delegations to the Second Committee would not be in a position to accept a unified text and even less a formalized text if only four weeks were to be allocated to that Committee. His delegation would therefore be grateful if equal emphasis were placed on the work of all Committees and would prefer the sixth session of the Conference to begin on 16 May, in accordance with the consensus in the General Committee.

36. The PRESIDENT said that his proposal had left the Conference in a flexible position to decide on its organization of work. The intention had been to ensure that the Second and Third Committees' work did not unduly interfere with that of the First Committee.

37. No specific date had been set for the convening of the sixth session, and he had suggested 23 May as a compromise.

38. Mr. SHERMAN (Liberia) said that, while his delegation could agree that the starting date should be 23 May, it wished to know whether the Conference would last seven or eight weeks.

39. The PRESIDENT said that the duration of the session would be seven weeks, but the Conference could decide on an eighth week if it deemed it necessary.

40. If there was no objection, he would take it that the Conference agreed that the sixth session should begin on 23 May 1977 and that the venue should be New York.

It was so decided.

41. Mr. ALI (Pakistan), referring to General Committee recommendation ix), said that he did not see how the President and the Chairmen of the Committees could, at the end of the sixth week, prepare an informal single composite text if there was no agreement. That would be an intrusion upon the responsibility of 150 delegations. His delegation therefore believed that, in view of the differences that still existed, the consolidation of the texts should be deferred until the following session.

42. The PRESIDENT explained that the understanding had been that the Conference would decide at a certain stage during the next session—say, at the end of the sixth week—whether the President of the Conference with the Chairmen of the Committees should prepare an informal single composite text.

43. Mr. KATEKA (United Republic of Tanzania) said that the recommendations of the General Committee should be more specific with respect to the programme of work. Recommendation iv) for example, should state that the first two weeks would be devoted to First Committee matters. Recommendation v) should also be more specific so that, if the need arose for the President and the Chairmen of the Committees to prepare a composite text, that could be done early enough to give the Conference time to reach an agreement.

44. Furthermore, if the Conference decided that it should reach agreement by consensus and without resorting to a vote, that would be vitiating a right laid down in the rules of procedure. He was pessimistic about proceeding by any type of gentleman's agreement. At the beginning of each session it had been stated that that particular session would be most crucial, and his delegation wondered what would happen if no agreement was reached at the next session. The Conference would have to face realities and be prepared to resort to some other decision-making mechanism if that became necessary. His delegation was, and had been for some time, ready to take decisions and it therefore believed that a target date for that purpose should be set, without foreclosing the possibility of reaching decisions by other means if consensus was not possible. In other words, recommendation ix), rather than stating that "the Conference ... should act, if possible, by consensus and without resorting to a vote", should state that

“the Conference ... should act, if possible, by consensus without ruling out any other possibility.”

45. The PRESIDENT pointed out that the recommendations of the General Committee were merely guidelines and the Conference was free to change them. The recommendation on consensus had been made on the understanding that any member was at liberty to invoke the rules of procedure.

46. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that his delegation was most eager to agree on timely and realistic procedures in order to achieve tangible results at the next session. Great difficulties still remained owing to the adamant position of some interest groups and the desire of others to set aside the vital interests and positions of others. Governments now believed that the Conference was at a stage when matters should be approached from a political point of view, since technical issues had already been settled. States making concessions wanted something in return, and negotiations should be held with that in view.

47. Furthermore, it should be understood that some States had reached positions beyond which they could not go, and formulae should therefore be found to meet the aspirations of those States. Accordingly, the procedures for the next session should be provisional only. In other words, rather than setting hard and fast rules, consensus must be allowed to emerge naturally. If targets were not reached by the dates set, an impression of failure would be given. The recommendations of the General Committee should therefore be regarded merely as guidelines.

48. His delegation had reservations about the convening between sessions of meetings of any of the Committees, even on an informal basis, because all such meetings must have political implications. In other words, the results of intersessional meetings could not be used as criteria on which to proceed. For example, the difficulties encountered in the First Committee had resulted from the intersessional meetings of bodies in which the representation had been largely that of the industrialized nations, with very few representatives of the developing countries present. The fact that his delegation had doubts about intersessional meetings, however informal, of any Committee did not mean that it opposed meetings of interest groups. While the results of the latter meetings reflected the position of some States, they could not be said to reflect a consensus in the Committee.

49. THE PRESIDENT reiterated that he had already stated that the recommendations of the General Committee were merely suggestions or guidelines and he had heard no formal opposition to those guidelines. Those recommendations had been thoroughly discussed in the General Committee, in which all groups had been well represented.

50. He suggested that the Conference should decide to limit to five minutes the duration of statements for the remainder of the meeting.

It was so decided.

51. Mr. KOZYREV (Union of Soviet Socialist Republics) thanked the Chairman for his accurate report on the recommendations of the General Committee. Despite the difficulties which had arisen during the fifth session, positive results had been achieved in the Second and Third Committees and at plenary meetings on part IV of the revised single negotiating text. Although complete agreement had not been reached, delegations had made known their positions and some progress had been achieved on certain issues. It was to be hoped that future negotiations would be based on co-operation and understanding and that unilateral actions, which had caused considerable difficulties at the fifth session, would no longer be considered.

52. It had been suggested that, with respect to First Committee matters, political and ideological considerations should be abandoned and a pragmatic approach should be adopted. However, such an approach would not help to solve the problems. The question of using the resources of the international sea-bed area in the interests of all countries, par-

ticularly developing ones, was being considered at an international forum for the first time, and it was clear that a mutually acceptable solution must be based on recognition of the existence of different social, economic and political systems. Accordingly, the convention must guarantee that every country, whether socialist, socialist-oriented or capitalist, would have equal rights with respect to the use of sea-bed resources. His country believed, therefore, that both States and the International Authority should have the right to exploit sea-bed resources, whether independently or in association. However, the access of States to sea-bed resources should be limited and a provision to that effect, aimed at preventing any possible monopolization of those resources, was one of the most important principles in the system of exploitation of sea-bed resources. A system which made it possible to select a contractor from among different legal entities, including States, thereby facilitating discrimination against States, would not be acceptable. The common heritage of mankind could not be sold to the highest bidder; it belonged to the people of each and every country.

53. Most of the proposed solutions relating to First Committee matters had been one-sided, since they were inconsistent with the principle of using sea-bed resources in the interests of all States and would enable imperialist transnational corporations to dominate the sea-bed. The only possible approach to such matters was a multilateral one which recognized that the International Sea-bed Authority and every State had the right to exploit sea-bed resources; that the sea-bed could not be monopolized by one or more States and that the convention should include some system of limiting access to those resources; that the Authority should be provided with the facilities it would need for the exploitation of sea-bed resources and that the Authority should have the right to take whatever measures were needed to protect exporting countries, especially developing countries, against the adverse effects of sea-bed mining. His delegation was convinced that despite the difficulties, it would still be possible to agree on a “package deal” by consensus. His country and the other socialist countries of Eastern Europe had made many concessions, and hoped that other groups would do the same.

54. With respect to the organization of the next session, he agreed that the initial period should be devoted primarily to First Committee matters, that informal intersessional consultations open to all participants should be held and that the President of the Conference and the Chairmen of the Committees should participate in those consultations. A composite text should be prepared on a collective basis. His delegation would do everything possible to help establish a convention and hoped that other delegations would do likewise.

55. Mr. ENGO (United Republic of Cameroon) said that a Chairman should organize intersessional meetings only if he thought that they would be useful. The plans for such meetings and any resulting documents should be transmitted to the Secretariat for circulation to all States. Intersessional meetings between different groups should be encouraged, but should not be obligatory. Any large-scale multilateral meeting should transmit its conclusions to the Chairman. With respect to the next session, it would be wrong to draw close parallels between the First Committee and the other Committees or to assume that the First Committee could “catch up” with the other Committees in two or three weeks. The First Committee had political decisions to take and that required time.

56. The PRESIDENT agreed that the Chairmen should organize meetings only if they thought it useful to do so and that they should be informed of any proposal to hold intersessional meetings.

57. Mr. NJENGA (Kenya) said the General Committee's recommendation that the Conference should act by consensus and without resorting to a vote should be deleted; the Conference should act in accordance with its rules of procedure and should not preclude the possibility of voting. The recom-

mentation that the Chairman should take the initiative in arranging informal intersessional meetings went too far, since an intersessional meeting arranged by the Chairman might be regarded as another session of the Conference; delegations should take the initiative. For the sake of clarity, the recommendation that there would be no intersessional informal meetings of the Conference should be deleted, since it might give the impression that intersessional meetings should be formal.

58. The PRESIDENT said the General Committee had recommended that the Conference should act by consensus "if possible", and that was consistent with the rules of procedure. With respect to intersessional meetings, the recommendation of the General Committee was that there should be no intersessional meetings of the Conference, whether formal or informal.

59. Mr. LIN Ching (China) said that it was undoubtedly necessary and beneficial to assess appropriately the work of the current session and to analyse where the main problems lay, with a view to future consultations.

60. There existed different appraisals regarding the work of the current session. For instance, one super-Power had stated that the work of the First Committee represented a retrogression from the previous session. The other super-Power had stated that the activities of the Group of 77 had brought the work of the First Committee to a "standstill". His delegation believed that those assertions were all groundless. The revised text of the First Committee had moved backward substantially on certain major issues, as compared with the original Geneva text. The group of 77 had, through repeated negotiations and great efforts, produced important working papers concerning the system of exploiting the international sea-bed area, maintaining the principle of equity that the international sea-bed and the resources therein were the common heritage of mankind. It was precisely that that had made positive contributions to the correct advancement of the Conference, and his delegation firmly supported the Group of 77 showing the spirit of actively taking the initiative and adhering to principles.

61. The developing countries had upheld their unity, adhered to principles and actively conducted negotiations. That was in striking contrast to the practice of the super-Powers, which were obstinately clinging to their unreasonable positions and were saying one thing while doing another. The representative of one super-Power that styled itself "the natural ally of the developing countries" had made a lengthy statement in an attempt to show how sincerely it was ready for consultations and had appealed for "mutual concessions". Yet, while ostensibly it recognized the international sea-bed as the common heritage of mankind, in reality, like the other super-Power, it advocated a "parallel system of exploitation" in an attempt to partition and plunder the resources of the international sea-bed. It gave recognition to the 200-mile economic zone in words, yet insisted that the economic zone was a part of the high seas. It opposed the exclusive jurisdiction of coastal States over scientific research activities in the economic zone. It insisted that foreign military vessels need not give prior notification to or obtain authorization from coastal States for passage through the territorial sea and the straits lying within the territorial sea. It ignored the just proposals of the developing countries and refused to make compromises in substance, blaming the developing countries for lack of progress.

62. The basic contradiction of the present work on the law of the sea was that, while the third world countries wanted to safeguard their maritime rights and interests, the one or two super-Powers were not reconciled to the loss of their privileged position of monopolizing the seas. Quite clearly, it was the hegemonist position of the super-Powers that constituted the basic reason why the Conference failed to make due progress. The experience of the current session showed once again that the fundamental interests of the numerous developing countries brooked no violation. Any attempt by the one or

two super-Powers to impose their will on others would lead nowhere.

63. With regard to the land-locked and geographically disadvantaged States, especially those that were developing countries, his delegation's consistent position was that their reasonable maritime rights and interests should be duly guaranteed. The Fifth Conference of Heads of State or Government of Non-Aligned Countries held at Colombo in August 1976 had also reaffirmed the need to give particular consideration to the special problems of the least developed, land-locked and island developing countries and other geographically disadvantaged countries. The differences on that problem could be solved through negotiations.

64. His delegation was confident that, so long as the developing countries continued to strengthen their unity, they would be able to advance the development of the Conference in the correct direction, so as to establish a new convention on the law of the sea that was fair and reasonable and genuinely in accord with the fundamental interests of the peoples of all countries. His delegation was ready to continue working towards that goal together with the numerous developing countries and the countries that respected the principle of equity.

65. Mr. DABB (Papua New Guinea) said that, although some progress had perhaps been made at the fifth session, it was vital to make more at the sixth. He supported the idea of trying to reach set goals within a given period, but the recommendation that the Conference should act by consensus and without resorting to a vote should be deleted, since the rules of procedure of the Conference applied to all sessions.

66. Mr. COSTA LOBO (Portugal) said that he shared the general concern over the future of the Conference. However, it was only normal to encounter difficulties, and some progress had nevertheless been achieved. In connexion with the organization of work, he favoured as strict a calendar as possible, and hoped that such an approach would make it possible to draw up a convention. He drew attention to document A/CONF.62/L.14, which he considered very useful.

67. Mr. GAYAN (Mauritius) said that he felt pessimistic about the future of the Conference, since time was running out and world opinion was becoming increasingly cynical. Although it was vital to establish a draft convention at the next session and to take important political decisions, the time-table recommended by the General Committee was unsatisfactory because it was not flexible enough. The plenary should meet more often at the next session and decisions should be taken by consensus whenever possible; the rules of procedure should, however, remain in force.

68. Mr. MESLOUB (Algeria) said that it would be better not to take extraordinary measures or to establish a strict time-table and that questions on which agreement had not yet been reached should be dealt with by the official organs and according to the official procedures of the Conference. His delegation would probably not participate in intersessional regional meetings, since experience had shown that, when proposals from such meetings were incorporated in the negotiating text without being discussed by all participants beforehand, difficulties arose and the work of the Conference was delayed. The programme should therefore be as flexible as possible. He agreed that, at the next session, particular attention should be paid to First Committee matters, but emphasized that negotiations in other Committees should continue. Decisions should be taken by consensus, since only a convention based on consensus would stand the test of time and prevent unilateral actions which might, in the long term, damage relations between States. Delegations had not paid enough attention to the negative effect which the Conference was having on efforts to establish a new international economic order. In the First Committee, therefore, it was important to give full expression to the concept of the common heritage of mankind, and in the Second Committee it was vital

not to make extravagant and vague claims concerning the continental margin or to adopt a rigid attitude on the rights and duties of countries with respect to the economic zone. He hoped that more attention would be paid to such matters at the next session.

69. Mr. MHLANGA (Zambia) said the General Committee's recommendation that an informal single composite text should be prepared at the end of the sixth week of the next session was not flexible enough and should be deleted. The informality of the single composite text should be emphasized. The recommendation that the Conference should act by consensus and without resorting to a vote should be retained, since it was consistent with the rules of procedure. The recommendation that the Chairman should take the initiative should be clarified, since it was not clear which Chairman was being referred to.

70. The PRESIDENT said the recommendation that the Chairman should take the initiative referred to the Chairmen of the three Committees.

71. Mr. ARAMBURU MENCHACA (Peru) proposed that the Conference should recommend to the General Assembly that it study measures to ensure stability and continuity for the personnel recruited for the secretariat of the Conference, bearing in mind the temporary nature of the functions of the secretariat.

It was so decided.

Consideration of the reports by the Chairmen of the Committees

72. Mr. KOH (Singapore) said that throughout the Conference meetings had often been informal or closed, with the result that the mass media and world opinion had begun to think that nothing had been achieved and that the Conference might break down. However, in the Third Committee significant progress had been achieved with respect to marine pollution, and in the Second Committee some progress had been made with respect to the legal status of the exclusive economic zone, the delimitation of the continental shelf and revenue-sharing, the negotiations between land-locked States and transit States concerning transit to and from the sea, and negotiations between land-locked and geographically disadvantaged States and coastal States concerning the interrelated issues of acceptance of the concept of the exclusive economic zone and the right of land-locked and geographically disadvantaged States to exploit living resources in the economic zone of coastal States belonging to the same region or subregion. In his report (A/CONF.62/L.17), the Chairman of the Second Committee had made only vague references to the last of those topics, and more information was therefore required. Ten representatives of coastal States and 10 from land-locked and geographically disadvantaged States had met to discuss their differences for the first time. After hearing statements from both sides, the Chairman, Mr. Nandan of Fiji, had, on request, made a proposal which had been accepted by both sides as a basis for future negotiations. It had been said that the group of 21 was not an integral part of the Second Committee, but in fact the Second Committee had not organized a negotiating group on the topic in question because it was being discussed by the group of 21; that had been acknowledged by the Chairman in paragraph 23 of his report. The work of the group was therefore of considerable importance, since an agreement between coastal States and land-locked and geographically disadvantaged States would represent a major step forward for the Conference. He hoped that, in future negotiations, both sides would show good faith and would refrain from taking any unilateral action which might prejudice the outcome of their discussions.

73. Mr. ALI (Pakistan) said that the transit State referred to in paragraph 31 of the report by the Chairman of the Second Committee was Pakistan. In that connexion, his delegation had circulated to all members of the Second Committee a statement setting out its views on article 110 of part II of the

revised single negotiating text, explaining why it felt no agreement had been reached on changes to certain draft articles and drawing the attention of delegations to certain aspects of article 110 which adversely affected the sovereignty of transit States. If he were given a little more time, he would be able to bring out the serious point of the statement which he had made.

74. The PRESIDENT said that if there were points which had not been brought out, he would suggest that they should be taken up during the intersessional meetings or at the very beginning of the next session, or both. In that connexion, he requested the co-operation of the representative of Pakistan and other representatives.

75. Mr. ALI (Pakistan) said that he would defer to the President's views and would take it that the statement which he had made would be part of the proceedings.

76. Mr. MOLDT (German Democratic Republic) said that the reports by the Chairmen of the three Committees demonstrated that little progress had been achieved on many key issues. The establishment of the right of access of land-locked and geographically disadvantaged States to living resources in the economic zones of other States was essential for the success of the Conference.

77. The proceedings of the fifth session of the Conference had once again proved that an acceptable convention could be achieved only through serious negotiation. Unilateral action by certain countries to extend their national jurisdiction over areas of the high sea could only hamper future negotiations, which must be conducted in accordance with the principle of consensus and take account of the fact that all issues could be settled only as a "package". His delegation would continue to make every effort to ensure the conclusion of a universally acceptable convention as soon as possible.

78. Mr. WOLF (Austria) said that there could be no progressive development of international law, and in particular of the law of the sea, unless adequate account was taken of the legitimate aspirations of all members of the international community. A new law of the sea must also accommodate the rights and interests of the land-locked and geographically disadvantaged States if it was to gain world-wide acceptance. Such a new law could only be elaborated by the common endeavours of all States and could in no way be prejudged by the actions of a few countries. The group of land-locked and geographically disadvantaged States reiterated its thorough disapproval of and opposition to all unilateral actions extending different forms of national jurisdiction beyond 12 nautical miles or to the international area, and deeply regretted that its previous appeals had not been heeded. No State could validly purport to be subject to its jurisdiction, or to assert sovereign rights in relation to, areas or parts of areas which had been declared the common heritage of mankind or which constituted the *res communis* of all States. The land-locked and geographically disadvantaged States expressed the hope that no unilateral action of such a nature would be taken before the successful conclusion of the Conference and emphasized once again that they would continue to strive for the establishment of a new and just legal order of the seas benefiting all States and mankind as a whole.

79. Mr. NGATCHOU (Central African Republic) said that the establishment of a new international legal order for the high seas was essential to the development of all countries. However, chapters III and IV of part II of the revised single negotiating text, despite the amendments made, did not take sufficient account of the rights of all States. Those chapters were of extreme importance, since they concerned the two areas—the exclusive economic zone and the continental shelf—in which practically all sea-bed resources were concentrated.

80. Nevertheless, his delegation was heartened by the emergence of a desire to negotiate seriously in order to reconcile

different national positions. As a result, the land-locked and geographically disadvantaged States could hope to receive their rightful share of the resources of the sea-bed. He appealed to all peoples of goodwill to continue negotiations in the interests of all States. At the next session, his delegation would continue to seek a just distribution of the world's economic resources.

81. Mr. GAUCI (Malta) said that, to demonstrate Malta's continued commitment to the success of the Conference, his delegation, on instructions from its Government, had distributed to all delegations a booklet containing advance information regarding the facilities which the Maltese Government was prepared to make available once a final decision on the siting of the International Sea-bed Authority had been made. The booklet also demonstrated Malta's excellent geographical situation at the meeting-point of three continents and contained information on its initiatives with regard to the Conference on the Law of the Sea. In the light of those initiatives, Malta's moral claim to accommodate the Authority was self-evident. His delegation had been greatly encouraged by promises of support for its candidacy.

82. In view of the observations made by the Chairman of the First Committee in paragraph 34 of his introductory note to part I of the revised single negotiating text (see A/CONF.62/WP.8/Rev.1), to the effect that decisions on some of the provisions of article 20 would more appropriately be taken at a later stage, the existing text of article 20 of part I of the revised text could not be considered accurate.

83. Mr. ZEGERS (Chile) noted that, in his report (A/CONF.62/L.16), the Chairman of the First Committee had made no mention of policy regarding minerals or raw materials. He pointed out that that topic constituted an essential element of negotiations which had been included in all texts since 1968 and was referred to in article 9 of part I of the revised single negotiating text.

84. Mr. MHLANGA (Zambia) said the report by the Chairman of the First Committee demonstrated that more work would be required at the next session, particularly on article 9. With regard to the work of the Second Committee, he pointed out that, in an effort to find a compromise solution, his delegation had worked consistently in favour of the establishment of regional economic zones rather than national exclusive economic zones in order to ensure that all States would enjoy equal rights to both living and non-living resources. He appealed to all delegations to bear in mind in future negotiations that the Conference was concerned with the common heritage of mankind and must therefore ensure the equitable distribution of resources.

85. Mr. ARAMBURÚ MENCHACA (Peru) expressed full agreement with the observations of the representative of Chile regarding the report by the Chairman of the First Committee. His delegation had a number of reservations on that report and would make them known at the appropriate time.

86. Mr. KIRTON (Jamaica) reaffirmed his Government's offer to accommodate the International Sea-bed Authority in Jamaica. Following the original offer made by the Jamaican Government, the Group of 77 had decided by consensus to support the establishment of the Authority in Jamaica. As a result of that decision, which had been further supported by written commitments from other countries, his Government had made certain basic provisions which could quickly be brought to completion at the appropriate time. His Government was willing to take all necessary steps to ensure the successful functioning of the Authority.

87. Mr. VARVESI (Italy) said that the question of the siting of the Authority was of great importance, since it was essential to ensure that it was able to operate effectively and objectively for the benefit of all mankind. He therefore hoped that, at the next session, the matter would be given the attention it deserved.

88. Mr. MALLA (Nepal) supported the views expressed by the

representative of Singapore with regard to the work of the group of 21.

89. Referring to paragraphs 30 to 32 of the report by the Chairman of the Second Committee, he said that his delegation had been unable to attend the final meeting of the consultative group because it had not received sufficient notice of that meeting. He noted that the report made no mention of the progress—albeit limited—which had been made in the Committee. He wondered whether that omission was due to the position adopted by the very small minority of transit countries.

90. Mr. TELLO (Mexico) said that his delegation had reservations with regard to some aspects of the report by the Chairman of the First Committee. Those reservations would be stated in detail at the following session.

91. The PRESIDENT, in farewell remarks, said the current session of the Conference had been more strenuous than any other. Experience had taught him to be neither optimistic nor pessimistic. He thanked the other officers of the Conference, the delegates and the Secretariat for their co-operation.

92. He hoped that, when the Conference resumed in another eight or nine months, the period of gestation would have produced something.

Mr. Vindenes (Norway) Vice-President, took the chair.

93. Mr. SIBAHÍ (Syrian Arab Republic) supported the establishment of the headquarters of the International Sea-bed Authority in Malta, for the geographical reasons given by the representative of Malta. He hoped that the question would be discussed at the following session.

Statement by the Secretary-General

94. The SECRETARY-GENERAL said that, at the start of the current session of the Conference, there had been keen awareness of its importance in the search for a final comprehensive agreement on the law of the sea. In particular, there had been an awareness of the possibility that irreversible developments might overtake the deliberations if progress was not made. He realized how difficult and complicated the negotiations and discussions had been, but at the same time he must express his concern at the limited progress that had been made.

95. The Conference had reached a stage in which Governments must now take firm decisions that would make possible a general agreement on a new régime for the seas. If that agreement was not forthcoming soon, the goal of establishing an orderly régime for the oceans and making the concept of the common heritage of mankind a living reality might very well be put beyond reach.

96. In those circumstances, it seemed to him to be a matter of the greatest urgency for Governments to continue the process of consultations and negotiations in the time between now and the next session. If Governments agreed to adopt that procedure, the Secretariat stood ready to provide all the necessary facilities.

97. He could not overlook the fact that the responsibilities which all shared in the field of the law of the sea were not limited to finding solutions to immediate and practical problems, but encompassed wider obligations. Not the least of them was to ensure that the immense natural resources of the ocean would be protected for the benefit of future generations.

98. Nor could he ignore the fact that the results of the Conference would inescapably have an impact on how the world viewed the United Nations as an effective instrument for international negotiation and agreement.

99. He hoped that when the Conference reconvened in 1977 a true spirit of negotiation would prevail, supported by a firm determination to fulfil successfully the gigantic task entrusted to it by the international community.

Closure of the session

Following an exchange of courtesies, the President declared the fifth session of the Third United Nations Conference on the Law of the Sea closed.

The meeting rose at 7.30 p.m.