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1973-1982

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109th Plenary meeting

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the interests of developed and developing States. The current session had brought a reaffirmation of the overwhelming opinion that the negotiating text offered good prospects for a general compromise on those parts. It had been felt, in general, that the delicate balance achieved thus far should be preserved, without reopening negotiations on fundamental questions, in particular on the régime governing marine scientific research in the economic zone and on the continental shelf.

52. With respect to the suggestions and informal proposals contained in documents SR/1, TT/1 and MSR/2 and reproduced in annex I of the report, only some preliminary comments had been made, and in general it had been felt that some of them should be re-examined. The matter should be taken up again during the next session in order to decide on the most desirable procedure.

53. His report had been considered at the 39th meeting of the Third Committee, held on 13 September, and had won general approval.

54. The CHAIRMAN, in the absence of Mr. Beesley (Canada), Chairman of the Drafting Committee, read out the report which the latter had submitted to him in writing.

55. During the resumed seventh session, the Drafting Committee had held nine informal meetings, at which it had examined the documents submitted at its request by the secretariat (Informal Paper 1/Rev.1 and Add.1 and Informal Paper 2 and Add.1).

56. The work of the Drafting Committee had been greatly facilitated by the formation of language groups representing the six official languages of the United Nations and open to all delegations whether or not they were members of the Committee. On the basis of the work of those language groups and of Informal Paper 1/Rev.1/Add.1, the Committee had been able to formulate the recommendations appearing in Informal Paper 1/Rev.1/Add.2.

57. The language groups had continued their work on Informal Paper 2 and exchanged preliminary views concerning the nature of the recommendations they would make to the Committee. Copies of their reports would be mailed to members of the Committee and interested observers.

58. The Committee had asked the secretariat to prepare certain studies which would serve as a basis for future work. They related, for example, to the formal organization and structure of the Convention and the graphic presentation of the text in such a way that the versions of each provision in the six languages would appear next to each other. The re-

sults of the first study would be incorporated in that working tool of the Committee.

59. Lastly, with regard to the possibility that the Committee might meet between sessions of the Conference, the general view of the Committee members was that that would be necessary only if other Conference bodies also met.

60. Speaking as President of the Conference, he said that the present meeting was not the time for considering the substantive questions dealt with in the reports, since the latter represented only one stage in the negotiating process. When all the questions had been dealt with in negotiations which had reached approximately the same stage, it would be possible to comment on all the formulations and proposals. He therefore urged delegations to abide by that procedure.

61. Mr. WOLFF (Federal Republic of Germany) said that, although he had been prepared to make a detailed statement, he would accede to the Chairman's request and not take up any substantive matters. That fact should not be interpreted as approval of the contents of the reports.

62. There was reason for serious objection to the suggestions made in the reports of negotiating groups 1, 2 and 3, and in particular the figures contained in the proposals made by the Chairman of negotiating group 2. He therefore reserved his delegation's position and hoped that those matters would be considered in detail at the next session.

63. Mr. NAKAGAWA (Japan) said that the compromise formula proposed by the Chairman of negotiating group 2 to the First Committee contained some positive elements, but his delegation had a number of objections which it would state in detail at the next session.

64. Mr. RICHARDSON (United States of America) said that the resumed seventh session had been expeditious and fruitful. Nevertheless, there had been little progress on substantive questions, and only a considerable acceleration of the work would make it possible to finish it within the time-limits that would be decided upon.

65. Referring to the compromise formula proposed by the Chairman of Negotiating Group 2, he said that he felt it necessary to state in advance, in order to avoid any misunderstanding, that the formula gave rise to serious difficulties, although he would state his definitive position at the next session, after his delegation had been able to study the formula in detail.

The meeting rose at 1 p.m.

109th meeting

Friday, 15 September 1978, at 3.40 p.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (concluded)

REPORTS OF THE COMMITTEES (concluded)

1. Mr. DE LACHARRIÈRE (France), having expressed satisfaction with the progress achieved in the control of pollution from vessels, said that his delegation had reservations on a number of points dealt with in the reports of the chairmen of the First Committee and of its negotiating groups,

particularly with regard to the figures contained in the report of negotiating group 2 (NG2/10/Rev.1).¹

2. Mr. SONDAAL (Netherlands) said that, although some parts of the documents prepared at the current session contained positive elements and represented progress, others were not yet satisfactory to his delegation, in particular those relating to selection of applicants, the transfer of technology and the financial clauses of contracts.

3. Mr. VARVESI (Italy) said that, in general, the reports of the chairmen of the committees, the Drafting Committee and

¹*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 144.

the negotiating groups reflected fairly the debates that had taken place at the resumed seventh session of the Conference. However, the percentages and figures contained in the report of negotiating group 2 should receive careful consideration at the following session. They seemed to entail excessively heavy financial charges which were likely to discourage activities in the international area. Consequently, his delegation associated itself with the reservations already expressed in that regard by other delegations.

4. Mr. NOLARD (Belgium) also associated himself with the reservations expressed regarding the financial obligations referred to in the report of negotiating group 2. However, he was convinced that, under the enlightened guidance of its chairman, that group would, at the following session, reach an agreement acceptable to all.

5. Mr. ARCULUS (United Kingdom) said that the new documents prepared at the resumed seventh session would prove useful to the Conference in its future work. However, since the report of negotiating group 2 was based on questionable hypotheses and contained figures which were not realistic, he welcomed the assurance given by the Chairman of the First Committee that that document would be considered in detail at the eighth session.

6. With regard to the work of the First Committee, he expressed satisfaction that the Chairman of that Committee had, at the preceding meeting, stressed the importance of the question of decision-making in the Council, which, if resolved, would open up new possibilities for the negotiations. If that question could be settled at the next session, the task of the Conference would be greatly simplified; if it was not settled, that task would become even more difficult.

7. With regard to the questions dealt with by the Second Committee, he noted with satisfaction that a number of delegations had joined those supporting the formulation concerning the definition of the continental margin—a formulation for which his own delegation had expressed its support. He was also satisfied with the new text prepared by the Third Committee regarding pollution from vessels.

8. Mr. PIRZADA (Pakistan) said that his delegation, while paying tribute to the Chairmen of the Negotiating Groups for the valuable work which they had done, reserved its position on the various texts which had been prepared at the resumed seventh session and would make detailed observations on them at the following session. Unfortunately, although considerable work had been done, the Conference did not seem to be any closer to achieving its objective, namely, to review the informal composite negotiating text² and possibly make it official.

9. Mr. ADIO (Nigeria) said that his delegation also reserved its position on the new texts prepared at the resumed seventh session. If a choice had to be made between those texts and the negotiating text, his delegation would unquestionably prefer the latter.

10. Mr. KOZYREV (Union of Soviet Socialist Republics) said that, in spite of the attempts by certain delegations to reopen discussion of the compromise texts adopted during the first part of the seventh session, negotiating group 1 had considered new aspects of the system of exploration and exploitation. If the Group of 77 believed that the texts prepared on that question during the first part of the session could be used as a basis for an acceptable solution and was in favour of their adoption, his own delegation would be prepared to accept them. The new compromise texts contained in the reports of negotiating groups 1, 2 and 3 tended by and large towards a compromise solution. However, his delegation deplored the fact that those texts contained no reference to the anti-monopoly clause.

11. The report of the Chairman of the Second Committee indicated that measures necessary for the advancement of negotiations had been taken. His delegation expressed the hope therefore that, at the following session, delegations would be in a position to finalize compromise texts on questions on which there was as yet no consensus.

12. The atmosphere that had prevailed in the Third Committee augured well for the success of its work at the eighth session.

13. Negotiating group 4 had made substantial progress, which should enable a balanced solution to be found to the problem of the access of land-locked and geographically disadvantaged States to the living resources of the economic zones. Conversely, negotiating group 5, although it had made some progress, could not really be considered to have completed its task. His delegation could not accept the conclusion contained in the group's report that the plenary Conference should take decisions on matters which were yet to be negotiated within the group. Negotiating group 7 had made considerable progress which must be followed up. The three questions dealt with by that group could be solved only if considered as a whole.

14. His delegation welcomed the fact that, in its report, the General Committee had set as the objective for the following session the conclusion of discussion on the informal composite negotiating text and the drafting of a revised text. That objective could certainly be achieved if all delegations drew the necessary conclusions from what had transpired at the resumed seventh session.

15. Mr. DE SOTO (Peru) said that the Group of 77, for which he acted as co-ordinator in the First Committee, had not yet been able to consider the proposals contained in the report of negotiating group 2, but that it would submit its observations on them in due course. However, on behalf of the other members of the Group of 77 in the First Committee, he wished, at the outset, to congratulate the Chairman of that negotiating group on the way in which he had discharged his responsibilities.

16. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that, because of his country's position regarding the territorial sea and the limit of 200 nautical miles, his delegation had general reservations on the report of negotiating group 4. He also expressed concern at the attempts of the major Powers to reopen the debate on the issues dealt with by negotiating group 5. He would reiterate his delegation's position on that question at the eighth session. He also had reservations on the text relating to breaches of international laws and regulations in the 200-mile zone submitted by the Third Committee. Finally, his delegation was disturbed by the attempts, as referred to by the Chairman of negotiating group 1, to reopen discussion of the compromise formula agreed to at the end of the first part of the seventh session. If debate was reopened, his delegation would be compelled to maintain its initial position, which was that of the Group of 77 and was the only one that guaranteed that the interests of the developing countries would be properly protected.

17. Mr. BHUSHAN (India) said that his Government would give careful consideration to the concrete proposals submitted by the chairmen of the committees and negotiating groups, in particular negotiating groups 1, 2, 3, 6 and 7. The proposals of the Chairman of negotiating group 2 concerning the financial arrangements between the Authority and contractors, while they contained some positive elements, did not seem to afford the Authority and the Enterprise a reasonable opportunity to engage in sea-bed mining effectively from the time of the entry into force of the convention. Nevertheless, that was the main objective of the system of parallel exploitation, which was the compromise solution contemplated by the Conference. Moreover, the Conference had not yet considered whether it would be advisable to

²*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

provide for an international tax in respect of the Authority's share. That was a question that must be considered at the following session. His delegation associated itself with those which considered that, although the progress made at the resumed seventh session might not have been as substantial as had been anticipated, nevertheless the session had not been entirely unproductive.

18. Mr. GHARBI (Morocco) deplored the fact that, in the otherwise excellent report of the Chairman of negotiating group 7, emphasis had been given to issues which were still pending, rather than to areas of agreement. His delegation nevertheless had the impression that the negotiating group was closer than ever to a consensus on all aspects of the question of the delimitation of maritime zones. Furthermore, the irresistible trend of negotiations on the issue of the settlement of disputes indicated clearly the directions in which success was most likely. Moreover, the gradual development noted in international practice and jurisprudence showed clearly that the stage of abstract controversy regarding the general principles and criteria of delimitation was past. There was therefore reason to hope that negotiating group 7 would resume its deliberations at the following session in a spirit of realism and without becoming involved in spurious doctrinal issues.

19. Mr. ATEIGA (Libyan Arab Jamahiriya) said that, in view of the fact that certain gaps existed in regard to the question of the principles and criteria to be applied in determining the territorial régime of States adjacent or opposite to each other, measures had been taken which had been received favourably by negotiating group 7 at the resumed seventh session. His delegation hoped that consultations would continue in a positive spirit and that the Conference would be able to complete them by drafting a convention in 1979.

Questions concerning unilateral legislation on the resources of the sea-bed

20. Mr. NANDAN (Fiji), speaking as Chairman of the Group of 77, expressed his concern over the fact that several industrialized countries were contemplating or enacting unilateral legislation relating to the exploitation of the resources of the sea-bed at a time when the Conference had virtually concluded its difficult work and when the conclusion of a universally agreed convention to regulate future relations in the oceans in an orderly and peaceful manner was within sight. The Conference had been making steady progress towards such a convention, which would deal with a broad spectrum of international law of the sea, from territorial jurisdiction of States to deep sea-bed mining beyond national jurisdiction. It was clear that a task of that magnitude, which involved a multitude of often conflicting national and international interests, could not be negotiated overnight and could not be compared with the relatively simpler processes of national legislation. If the progress of the Conference appeared slow, it was because of the vital nature of the issues and the desire to achieve agreements that would be durable and universally respected. It should also be noted that the negotiations under way had been further protracted due to the demands of the industrialized countries for the elaboration of a detailed mining code instead of a broad framework for international sea-bed mining. That the very same States which had been responsible for unduly prolonging negotiations should now hastily proceed with unilateral legislation that might conceivably wreck the Conference and destroy the hard-won progress it had made following the principle of consensus was even more incomprehensible.

21. The Group of 77 rejected the entire basis for such legislation, in particular the premise that the right to engage in mining of the resources of the sea-bed beyond the limits of

national jurisdiction was a legal freedom of the high seas. There was no practice or custom, in the legal sense, or general treaty authorizing the exploitation of the sea-bed. The declaration contained in General Assembly resolution 2749 (XXV) expressly excluded the possibility of extending freedom of the high seas to the sea-beds and subjected exploration and exploitation of the sea-beds to the international régime to be established. The situation was therefore entirely different from that which applied to the exploitation of the traditional resources of the high seas, which was based on three centuries of custom and innumerable treaties. There was, in contrast, no source of international law which authorized the exploitation of the sea-bed beyond national jurisdiction for the benefit of individual States.

22. For the time being, then, in the absence of any legislation governing the sea-beds, the Declaration adopted by the General Assembly which provided that the sea-bed and its resources were the "common heritage of mankind" acquired a special significance. It could not be ignored merely by saying that General Assembly resolutions were not binding and were only recommendations. The Declaration was a solemn pronouncement by the most representative organ of the international community declaring that the resources of the sea-bed beyond national jurisdiction were the common heritage of mankind, could be exploited only under an international régime, and could not be unilaterally appropriated. All States, by adopting the Declaration without dissent, had accepted the common heritage principle, the international character of the sea-bed and its resources, and the inevitable legal consequences, namely that unilateral exploitation was incompatible with those principles. It should also be recalled that the Declaration was the result of several years of preparatory work and intensive negotiations both in the General Assembly and in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction. One could not therefore dismiss as just one more United Nations resolution a text which established a principle of international law precisely in the meaning of Article 38 of the Statute of the International Court of Justice and which embodied the opinion of the international community. The Declaration was thus the embodiment of current international law with regard to the régime of the sea-beds.

23. It was therefore clear that no State could act in violation of the principles contained in the Declaration, which expressly provided that "Every State shall have the responsibility to ensure that the activities in the area . . . shall be carried out in conformity with the international régime to be established". Unilateral exploitation would be a clear violation of international law, which entailed the corresponding legal responsibilities. The fact that no sovereignty was claimed was irrelevant. Unilateral recovery and appropriation of the resources, which were the subject of the Declaration, was tantamount not merely to claiming sovereignty, but to exercising it. One could not pretend that reserving a small, unilaterally decided, portion of the proceeds for developing countries amounted to fulfilling the obligation of exploiting the resources under the régime to be established.

24. The Group of 77 therefore reaffirmed that unilateral legislative action by a State or a group of States with regard to the exploitation of the sea-bed beyond the limits of national jurisdiction before a universally agreed international régime was established would be contrary to the Declaration of Principles Governing the Sea-Bed and Ocean Floor and would, even if supported by certain other States, be contrary to international law.

25. The Group of 77 could not accept that any rights might be acquired by any State, person or entity by virtue of such unilateral measures, or that they should seek recognition of such rights by the Conference. Such actions would raise an additional obstacle to the conclusion of the convention. The

Group of 77 refused to give a cloak of legality to initiatives which were illegal from the start and which were open to challenge at an appropriate time and in the proper forum. It could not accept the adoption of measures which would prejudice negotiations and might well precipitate a chaotic situation with regard to the law of the sea, for, in such a situation, no one could expect to enjoy all the guarantees regarding international uses of the ocean which had already been negotiated. The failure of so important a conference would adversely affect the whole system of multilateral negotiations under the aegis of the United Nations and would have repercussions for generations to come.

26. Those who were led by their short-sightedness and narrow concerns to create obstacles to the establishment of peaceful and orderly world institutions must bear the full responsibility for the irreparable consequences that such an attitude might have. In the interests of the future of the Conference, therefore, the Group of 77 called upon States to exercise restraint and to refrain from taking unilateral legislative or other actions relating to the exploitation of the resources of the sea-bed, reaffirming that the different aspects of the law of the sea currently being negotiated were inseparable. The Group of 77, for its part, would continue to work for a comprehensive convention of the law of the sea. It deplored and repudiated as wholly illegal any unilateral action for the exploration and exploitation of the deep sea-bed beyond the limits of national jurisdiction and categorically asserted that any such action would not be recognized.

27. Mr. RICHARDSON (United States of America) said that he wished to dispel certain misunderstandings on some key points. In the first place, no Government represented at the Conference was more dedicated than the Government of the United States to the conclusion of a broadly acceptable comprehensive convention on the law of the sea as soon as possible. However, from the start of negotiations, his delegation had consistently maintained that the right to explore and exploit the sea-bed beyond the limits of national jurisdiction derived from the freedom of the high seas, which was enjoyed by all nations. Initiatives that a country might take beyond the limits of national jurisdiction could be limited only by provisions of international law. With regard to sea-bed mining, there did not exist, so far as his Government was aware, any restraints other than those which applied generally to the freedom of the high seas, including the prohibition of claims of sovereignty, the exclusive jurisdiction of States over their vessels and their nationals, and the duty to have reasonable regard for other users of the high seas. If States were to subscribe to a convention establishing an international authority entrusted with overseeing the sea-bed mining, they would then be subject to additional restraints, since they would have voluntarily accepted the alteration of their freedoms in the interest of establishing a stable legal régime to regulate the exploitation of ocean resources. But the United States could not accept the suggestion that, without its consent, other States would be able, by resolutions or statements, to deny or alter its rights under international law.

28. It had been stated that national jurisdiction in the matter under discussion was incompatible with General Assembly resolutions 2574 (XXIV) and 2749 (XXV). With regard to the former, he recalled that that "moratorium" resolution had been adopted by 62 votes for and 28 against, including that of the United States of America, with 28 abstentions. Thus, it could not be said that it had commanded unanimous support. Furthermore, his delegation, in explaining its negative vote, had stated that, as was the case with practically all General Assembly resolutions, that resolution, which purported to prescribe to States standards of conduct in the oceans, had no binding legal effect. On the other hand, the United States, along with 107 other countries, had voted for the Declaration of Principles Governing the Sea-Bed and Ocean Floor con-

tained in General Assembly resolution 2749 (XXV) adopted without opposition, with 14 abstentions. That resolution, while it proclaimed that the resources of the sea-beds were the "common heritage of mankind", did not purport to prohibit access to them. It was even apparent from its text, and from the statements made at the time of its adoption, that the intention had not been to impose it as an interim deep sea-bed mining régime, rather it had been intended as a general basis for further negotiation of an internationally agreed régime. The representative of the Soviet Union, in particular, had noted that the adoption of that declaration could not give rise to legal consequences for States, in view of the well-known fact that the decisions of the General Assembly were merely recommendations.³ The representative of the United States, for his part, had observed that the principles contained in the Declaration constituted a basis for subsequent negotiation of a definitive agreement containing an internationally agreed régime.⁴

29. Until the previous year, successive United States Governments had refrained from supporting Congressional efforts to regulate sea-bed mining. In view of the existing state of research and development work, they had considered that the adoption of such legislation could be deferred until the negotiations at the Third United Nations Conference on the Law of the Sea had been concluded. However, in October 1977, the United States Government had announced that it was prepared to support adoption of that legislation by Congress, in view of the disappointing results of the sixth session of the Conference, specifically with regard to part XI of the informal composite negotiating text and related annexes. The main reason for that change in attitude was, however, the fact that decisions on very large investments in deep sea-bed mining would soon have to be taken. Those decisions would take into account a broad range of factors that remained uncertain: the risks inherent in any new industrial activity, instability in the metal markets, the nature of an international legal régime and the date of its entry into force. The longer the delay in reaching an international agreement in that field, the more necessary it would become to set up an interim framework that would make it possible to define the legal obligations of companies engaged in sea-bed mining and to establish their rights in relation to each other. Refusal to carry out necessary further investment on the pretext of waiting for adequate legislation would jeopardize the whole development of that new activity, increase the already substantial cost of the undertaking and delay the actual commencement of mining. Those consequences would be all the more regrettable in that the resources in question would become increasingly important in the future. That was why the establishment of legislation could not be deferred any longer. The United States Government had always publicly taken the position that the development of sea-bed mining technology should be encouraged, precisely in order to make those new resources available to mankind. When General Assembly resolution 2574 (XXIV) had been adopted, the representative of the United States had pointed out that, if the development of sea-bed mining technology was retarded, all countries, developed and developing, coastal and landlocked, in the east, west, north and south, would be prevented from benefiting from those resources.⁵ The United States Government had therefore worked with the Congress in framing legislation compatible with the primary goal of the Conference, namely, the negotiation of a comprehensive law of the sea convention. As he had already said at the 41st

³See *Official Records of the General Assembly, Twenty-fifth Session, First Committee, 1798th meeting*, para. 65.

⁴*Ibid.*, 1799th meeting, para. 19.

⁵*Ibid.*, *Twenty-fourth Session, First Committee, 1833rd meeting*, para. 7.

meeting of the General Committee on 28 August, that legislation was fundamentally consonant with the aims of the Conference, which it could be hoped would adopt an international sea-bed régime well before exploitation could be begun under the terms of national legislation.

30. Mr. KOZYREV (Union of Soviet Socialist Republics) said that the question of the inadmissibility of unilateral adoption of legislation on sea-bed mining brought up by the Chairman of the Group of 77 constituted one of the major concerns of the Conference. At the 41st meeting of the General Committee, his delegation had already had occasion to support the statements of the representative of Fiji and other delegations to the effect that any attempt by any country to undertake arbitrary unilateral action, particularly with regard to mining of metallic nodules on the ocean floor, would be illegal. It therefore associated itself with the appeal made by the Chairman of the Group of 77 to the United States of America that that country should refrain from taking such an initiative, which could not be justified by invoking both the principle of the freedom of the high seas and that of the common heritage of man, as the representative of the United States had done at the 41st meeting of the General Committee. The measures contemplated by the United States, which would consist in monopolizing the resources of the sea-bed and ocean floor, would jeopardize existing international agreements in that field and would constitute a violation of the Declaration adopted in 1970, pursuant to which all activities connected with the exploration and exploitation of those resources would be governed by an international régime. Such an initiative would therefore be tantamount to substituting that international régime for a national régime for the exploration and exploitation of resources in the area under consideration by private companies.

31. Members of the Committee would recall that, in part D of resolution 2574 (XXIV), the General Assembly declared that, pending the establishment of an international régime, States and persons, physical or juridical, were bound to refrain from all activities of exploitation of the resources of the area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. In the declaration set forth in resolution 2749 (XXV) adopted the following year, the Assembly solemnly declared that all activities in that area should be governed by an international régime to be established and that no State or person, natural or juridical, should be able to claim, exercise or acquire rights with respect to the area or its resources incompatible with that régime. It was precisely that important principle that was developed in the informal composite negotiating text. All the foregoing made it clear that initiatives such as those contemplated by certain countries were unacceptable and contrary to the prevailing moral and political, if not legal, norm in the field under consideration.

32. The international community was now engaged in a complex process of legal codification to prepare legislation in conformity with the aforementioned principles. Any unilateral initiative could only be regarded by the majority of countries as a challenge to the international jurisdictions concerned. It was particularly disquieting that, at the point at which the Conference was attempting to overcome the areas of disagreement engendered by the question of the exploration and exploitation of sea-bed resources, certain countries should claim the right to substitute unilaterally the international régime under consideration for a national régime. His delegation wished to recall that the question of the sea-bed régime could not be dissociated from the global solution that would be adopted with regard to the law of the sea. It was therefore convinced, as were other delegations, that any arbitrary unilateral attempt in that field would further complicate the work of the Conference and prevent it from instituting the desired international régime.

33. His delegation assured those delegations participating in the Conference that it would continue to do everything within its power to bring about the adoption of a mutually acceptable solution to the problem of the sea-bed régime as well as to other problems that the Conference must solve.

34. Mr. KE Tsai-shuo (China) said he fully endorsed the statement made by the spokesman for the Group of 77 and the appeal which the latter had made to the United States of America. That statement accurately reflected the concerns which the majority of States felt over the plans of some countries to enact unilaterally legislation governing the exploitation of sea-bed resources.

35. The General Assembly had clearly stated in resolutions 2574 (XXIV) and 2749 (XXV) that, pending the establishment of an international régime, States and persons, physical or juridical, were bound to refrain from all activities of exploitation of the resources of the sea-bed beyond the limits of national jurisdiction, and that the sea-bed and ocean floor and the resources thereof, were the common heritage of mankind. The international community, particularly the third world countries, had been working for a number of years to establish an equitable régime for the exploitation of the sea-bed. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had held numerous meetings. The Third United Nations Conference on the Law of the Sea, for its part, had held seven sessions since 1973, and had managed to make progress, despite all the difficulties that had arisen and the obstacles raised by the great Powers. All peoples could therefore hope that an international sea-bed régime would soon be established.

36. In the circumstances, unilateral action in that area would constitute a flagrant violation of the Declaration adopted by the General Assembly, and would jeopardize the negotiations being conducted at the Conference by giving rise to the firm opposition of many States. China wished to reaffirm the view which it had stated as early as 1973 that unilateral action would constitute a violation of the very principle of an international sea-bed régime.

37. One great Power, which had refused to accept the Declaration adopted by the General Assembly in 1970 and had tried to undermine the work of the Conference, now stated that it was opposed to any unilateral legislation. It would be well, therefore, to examine the real motives and intentions of that Power, which might be to compete with other great Powers in sea-bed mining. Like the small countries, China wished to avoid a scramble by the great Powers for the resources of the sea-bed and would make every effort to promote the establishment of an equitable international sea-bed régime.

38. Mr. BAROODY (Saudi Arabia) said that he had listened attentively to the statements made by the representatives of the three great Powers who had spoken before him. It seemed to him at the final meeting that the Conference had reached an impasse. How was it possible, after the statements that had just been made, to hope for tangible results, despite the tremendous work which had been done under the leadership of the chairmen of the committees and negotiating groups, whose optimism his delegation unfortunately did not share? Nevertheless, he believed that the texts which had been produced could provide a basis for consensus.

39. He appealed to the opposing sides, not as a representative of a Member State, but as a member of the United Nations community, to stop politicizing matters which were essentially economic. If members wished to find a solution rather than to indulge in rigid theorizing, they must demonstrate pragmatism. The excessive politicizing of every issue was a pitfall which the international community had failed to avoid, either within the League of Nations or within the United Nations.

40. It was possible, however, to find a solution which was purely economic, which need not alarm the members of the Group of 77 or other countries, and which took into account the realities, including the fact that capital and technology were not equally distributed throughout the world. Efforts should be made in that direction instead of continuing the discussion at the level of slogans, whether they be the "common heritage of mankind" or any other equally respectable formula. The wealth of some and the poverty of others were undeniable facts. The only way to remedy the situation was to join forces and put aside fears of monopolistic designs, since in every country there were liberals to oppose monopolies.

41. The time had come to set aside political differences and reach agreement on how to use the capital and technology that was currently available in the world. He did not claim to have a solution for every problem, but it seemed to him that the interests of all would be served by the establishment of an authority in which States that had capital to provide and those which had technology and know-how—which were not necessarily one and the same, nor were they necessarily super-Powers—would be represented and, concurrently, by the establishment of a fund, the management of which would be supervised by an international committee, for example. It would be truly unwise to reject such a workable solution, just as it would be unreasonable for those who could contribute nothing to the exploitation of the sea-bed to expect to receive the lion's share. Realism dictated the acceptance of such a solution. Experience had shown what the practical effects of a majority vote against the super-Powers would be: they would not be prevented from exploiting the sea-bed if they had made up their minds to do so.

42. He appealed to all participants in the Conference to listen to the voice of reason and to avoid hasty action. Such a course was in the interest of all, as well as in the interest of the United Nations, which might otherwise be discredited beyond remedy in the eyes of the public. The world had grown weary of the excessive politicizing of every issue. What was needed in future negotiations was fair play, goodwill, a sense of justice and a willingness to work together to harmonize the various views and produce the text of a generally acceptable convention, which was within reach.

43. Mr. DE LACHARRIÈRE (France) said that, legally speaking, the argument put forward by the spokesman for the Group of 77 to the effect that unilateral exploitation of the sea-bed was unlawful was not valid. It should be clearly understood that no Government could be bound under international law unless it agreed to be so bound in a treaty, and that in no case could a Government be bound by a legal rule which others sought to impose on it. France had never agreed to any limitations on the freedoms of the sea in so far as they related to the exploitation of the sea-bed apart from those limitations which it might have accepted by treaty or within the framework of the development of international customary law. There were no provisions in existing international positive law which prohibited the reasonable exploitation of the sea-bed on an individual basis.

44. That having been said, France was completely in favour of the establishment of an international régime for sea-bed mining that was negotiated in the general interest and broadly accepted.

45. Mr. WOLFF (Federal Republic of Germany) said that he had listened carefully to the statement made by the spokesman for the Group of 77. Despite his admiration for the latter and their common determination to spare no effort in seeking a convention, he did not share his opinion with regard to the consequences which unilateral action might have on the progress of the negotiations. In his view the matter had to be placed in a broader perspective. His delegation did not wish to initiate a legal debate concerning the

past, which was rich in examples of unilateral actions taken in many other areas. In view of the statement made by Mr. Nandan, it felt constrained to clarify its position. In his delegation's view, any legislation adopted by a State concerning the mining by its nationals of manganese nodules from the sea-bed beyond the limits of national jurisdiction would be consistent with international law, provided that it took duly into account the general principles of law governing the uses of the seas and marine resources. On that matter, he shared the view of the representatives of the United States of America and France.

46. Moreover, the impact of deep sea mining legislation might not necessarily be as great as the Group of 77 expected, especially if agreement, which was already in sight and which the Federal Republic of Germany was more willing than ever to promote, was soon reached.

47. Mr. ONIGA (Romania) said he fully endorsed the position of the Group of 77, as outlined by Mr. Nandan, which opened up new prospects and possibilities for future negotiations. In the view of his delegation, the work of the two parts of the seventh session had not been fruitless, in that the differences between States participating in the Conference had been narrowed down, and that was a decidedly encouraging trend. Members should now make the efforts which were still necessary to achieve solutions which were acceptable to all and which took duly into account the interests of all countries, particularly the developing countries.

48. Mr. EVENSEN (Norway), speaking on behalf of Finland, Norway and Sweden, said that those three countries were seriously concerned over the current situation and that they were disturbed by the fact that some States were preparing to adopt unilaterally legislation concerning the mining of the sea-bed. In the view of those delegations, such action could have disastrous consequences for future negotiations and for the very outcome of the Conference, particularly if the legislation entered into force at a critical stage in the work of the Conference, which seemed, in fact, to be nearing conclusion. In the circumstances, he appealed to all countries which were planning to adopt unilateral legislation to be patient and to refrain from taking such action before the Conference on the Law of the Sea concluded its work.

49. The Governments of Norway, Sweden and Finland, for their part, would do their utmost to ensure that the Conference attained the objective it had set for itself, namely, to produce, as quickly as possible, a complete and final text of a convention, which would make it pointless for any State to adopt unilateral measures.

50. Mr. LAPOINTE (Canada) said he wished to reiterate the position which his delegation had always held, namely that there was no point in preventing preparatory exploration and research work on the sea-bed. Nevertheless, his delegation had always made a very clear distinction between exploration and exploitation. In its view, exploitation should begin only when the convention which the Conference was trying to finalize in the interest of the entire world was adopted. The impatience felt by certain circles and Governments was of course understandable, but in the current circumstances it could prove dangerous to take unilateral measures. In that connexion, his delegation was less concerned at the legal arguments which had been invoked than at the psychological and political aspects of such an action, to which a large number of participant States had drawn attention. In its concern at the current situation, his delegation reiterated its appeal to all parties not to act in haste and adopt without further ado measures which might not be in complete conformity with the objectives pursued by the Conference, but rather to be patient and to bear in mind the tremendous progress which had been made so far and the hope shared by all participants that the Conference would soon complete its work.

51. Mr. VARVESI (Italy) said he had listened attentively to the statement by Mr. Nandan and associated himself with those speakers who had stressed that the activities of States could be limited only by specific rules of international law. That had always been the case, and activities carried out at sea and on the sea-bed beyond the limits of national jurisdiction were no exception to that principle. In that connexion, it should be recalled that General Assembly resolution 2574 D (XXIV) concerning the moratorium had aroused considerable opposition. His country had been one of those which had voted against that resolution, and numerous other countries had abstained. That resolution could not, therefore, be considered to reflect current international law. As for resolution 2749 (XXV), which contained the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, and for which his delegation had voted, it must be borne in mind that that was not a binding instrument and that, in any case, the Declaration did not limit the freedom to carry out activities concerning the sea-bed in the international area. In view of the stage reached in technological development, it now appeared to be in the interest of the international community to begin to exploit the minerals on the sea-bed.

52. Nevertheless, his delegation remained fully determined to work for the adoption of a generally acceptable convention.

53. Mr. NOLARD (Belgium) said that he shared the opinion of the representative of France that no State could be bound by international law without its consent. At the current stage, no rule of positive international law prohibited the exploitation of the mineral resources of the oceans. Having adhered to the principles set out in resolution 2749 (XXV), his delegation hoped that the international régime provided for in that resolution might be finalized in the very near future and was prepared to do all it could to help bring that about. However, if that objective could not be achieved quickly, his delegation would be able to agree to the adoption of transitional provisions in order to protect precisely the principles laid down in that resolution, and would regard the provisions of any transitional national legislation which respected those principles as beneficial to the economic progress of mankind.

54. Mr. NAKAGAWA (Japan) said his delegation was as anxious as, if not more anxious than, any other to secure the conclusion of a convention on the law of the sea as soon as possible. His country had no plan at present for national legislation regarding the exploitation of the sea-bed. It did, however, believe that the unilateral legislation which some countries intended to adopt in no way contradicted the concept of the common heritage of man embodied in General Assembly resolution 2749 (XXV), and that the question of the legality of such measures *vis-à-vis* international law could not be raised as long as no convention had been concluded.

55. Mr. BOS (Netherlands) said he had followed with interest the discussion on the question of unilateral legislation and had listened attentively to the statement made on behalf of the Group of 77. His delegation had been very active throughout all the sessions of the Conference on the Law of the Sea, in the hope that a consensus would be reached on a general convention and, in particular, on the régime to be applied to the exploitation of the resources of the sea and the sea-bed. His delegation had attempted to reach a compromise solution on that issue which took due account of the concept of the common heritage of mankind embodied in the General Assembly resolution already mentioned without, however, rendering the possibilities of exploiting the sea-bed illusory. His delegation remained convinced that, despite the rather disappointing results of the second half of the seventh session, such a compromise solution was possible. It did not, however, share the view of the Group of 77 which regarded any unilateral legislation as totally invalid. Nor did it see how

the preparatory work for the adoption of such legislation, or even the actual adoption of such legislation could jeopardize the outcome of the Conference.

56. So far, his country had not adopted a position as to the necessity or advisability, at the current stage, of adopting any unilateral transitional national legislation. It did, however, believe that States whose nationals had the means to exploit the sea-bed had a duty to exercise jurisdiction over any of their nationals who might undertake such activities, pending the establishment of the international authority. In such cases, they should act as agents for the international authority, pending the entry into force of an international convention on the law of the sea, for it was quite clear that to give anyone complete freedom to exploit the sea-bed would lead to unacceptable situations.

57. His delegation, for its part, would spare no effort to ensure that such a convention could be concluded as soon as possible.

58. Mr. FRANCIS (New Zealand) noted that many delegations had stressed their opposition to the adoption of any unilateral legislation on the exploitation of the sea-bed. His delegation too was concerned about that problem, since one of the essential goals of the Conference was precisely to establish an international system for the exploitation of the sea-bed. Unilateral initiatives might jeopardize the current efforts to formulate the law of the sea and the negotiations under way in the international community. However, there had been some reassuring statements in that connexion. The impatience of some Governments and business circles at the delay in establishing an international régime was, of course, understandable; however, it was encouraging to note that considerable progress had been made. The First Committee should very soon be able to work out a text which would constitute the most effective means of blocking any unilateral efforts; it was therefore to be hoped that the Conference would be able to achieve decisive progress, in that area as in others, at its eighth session.

59. Mr. BRENNAN (Australia) felt that the statement just made by the Chairman of the Group of 77 should be studied carefully, since it reflected the views of a large number of developing countries. His delegation had also taken careful note of the statement made by the representative of the United States and of the fact that that country had committed itself to participate in the working out of a convention covering all aspects of the law of the sea. Although some people might feel that the negotiations aimed at establishing an international régime for exploiting the sea-bed were not essential, his delegation wished to re-emphasize the great importance which it attached to those negotiations. The Conference on the Law of the Sea had been convened, not only to clear up all of the uncertain areas in the existing legal rules, but also to establish an equitable régime for the sea-bed. In his view, there was no reason to be excessively impatient over the delays encountered by those efforts, if one bore in mind the considerable progress which they had nevertheless achieved. His delegation felt, furthermore, that no aspect of the informal composite negotiating text should be neglected, since all were of equal importance. It was reassuring that at the current stage of the work, both during the discussions in the General Committee on the previous day and at the current plenary meeting, all States had shown themselves firmly resolved to bring the Conference to a successful conclusion at its next session.

60. Mr. ARCULUS (United Kingdom), referring to the statement by the representative of Fiji, said his Government held a different view of the pertinent resolutions including, in particular, the 1970 Declaration and the moratorium resolution of 1969, as was expressed at the time. It also held a different view on the question of legality as, in its belief, deep sea mining and legislation to regulate it were lawful. As far

as the Conference was concerned, interim legislation pending a successful convention would simply aim, as a piece of domestic housekeeping, to regulate entry into the new field in order to ensure orderly progress and the essential continuity of investment needed to develop the new technology. Progress must not be held up, for it was in the interests of the world's consumers of minerals, which included not only the United Kingdom but most developing countries. Interim legislation would be no more than a temporary umbrella which would in no way jeopardize the results of the Conference if it continued to do its work.

61. He hoped delegates would take careful note of the final sentences of the statement by the representative of the United States. The Government of the United Kingdom remained fully committed to the successful conclusion of a comprehensive and generally acceptable convention as soon as it could be achieved.

62. Mr. GOERNER (German Democratic Republic) said his delegation shared the concern expressed by the developing countries at any unilateral measures to exploit the sea-bed, which could only jeopardize the decisive negotiations currently under way. The adoption of such measures could not be justified by invoking the principle of the freedom of the high seas and would run counter to international law. He joined the delegations of developing countries in urging the States which were planning to take such measures to abandon such plans so as not to hinder the speedy conclusion of a convention which could be generally accepted.

63. Mr. WITEK (Poland) expressed grave concern regarding the unilateral measures which some States were planning to take to exploit the mineral resources of the sea-bed outside their national jurisdiction. Such measures, which would follow the recent unilateral extension of national jurisdictions, were bound to be detrimental to international relations and to jeopardize the normal exploitation of the sea-bed. They would run counter to the principle of the common heritage of mankind, the principle of international co-operation, and the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction adopted by the General Assembly in its resolution 2749 (XXV), and would have no legal basis, as had been demonstrated during the discussions in negotiating groups 1 and 2 at the current resumed session. Furthermore, the unilateral exploitation of the mineral resources of the sea-bed could not be justified at the current stage by any economic considerations, since dry-land deposits were still adequate. In insisting on undertaking the exploitation of sea-bed resources, certain States must therefore be prompted by political motives, and must be seeking in that way to strengthen their negotiating position in order to ensure that they would gain control of vast areas of the sea-bed. As a member of the international community and of the group of land-locked and other geographically disadvantaged States, his country therefore urged those States which wished to speed up the elaboration of a régime for the exploitation of the sea-bed to play a greater role to that end in the negotiations of the Conference.

64. Mr. CHAO (Singapore), speaking as a member of the Group of 77, formally supported the statement made by the Chairman of the Group. It would be extremely regrettable for any State to take unilateral measures to exploit the sea-bed beyond its national jurisdiction at the current decisive stage of the negotiations. He therefore urged all States to abstain from any unilateral measures which might be detrimental to the common heritage of mankind and in particular to the interests of the land-locked States which have no scope to claim any exclusive economic zone or continental shelf whatsoever and of the geographically disadvantaged States like his own country, which have extremely limited scope to claim any exclusive economic zone or continental shelf.

65. The PRESIDENT, noting that the group on behalf of which Mr. Nandan had spoken currently included 119 countries, stressed the disastrous psychological effects which any unilateral measures would inevitably have on the work of the Conference, in which negotiations could not proceed under coercion. He therefore appealed to all States to abstain from any measures that might hinder the preparation of an instrument that could be accepted by consensus, since he was convinced that, however the Conference ended, it would have a considerable impact on economic co-operation in all United Nations activities.

66. Mr. GAUCI (Malta) said that his country's position on the important question of the régime for the sea-bed was well known and therefore need not be restated. Without denying the importance of certain other questions, in particular that of the definition of the continental shelf, he wished to raise the question of the seat of the Authority, which his country had proposed should be situated in its territory. To facilitate a decision on that matter, his delegation had provided participants in the Conference with an information brochure on Malta indicating all the services that could be made available to the Authority. Such an important decision should not be taken without a detailed appraisal of all the factors involved and of long-term prospects.

Report of the Credentials Committee

67. Mr. HALL (Executive Secretary) said that the report of the Credentials Committee (A/CONF.62/68) should be amended by the insertion of Egypt in the list of countries contained in paragraph 3 and of Burundi in the list of paragraph 5.

68. Mr. LUKABU-K'HABOUJI (Zaire) said that Zaire, which was not mentioned in the report of the Credentials Committee, had submitted its delegation's credentials, which remained valid, at the session held at Caracas.

69. The PRESIDENT said that the report of the Credentials Committee would be amended to take account of the comments made by the representative of Zaire.

70. He suggested that the Conference should adopt the draft resolution contained in paragraph 9 of the report.

It was so decided.

Other matters

71. The PRESIDENT said he understood that delegations wished the reports of the chairmen of the committees and of the negotiating groups to be issued in a single document. He therefore suggested that the Conference should take a decision to that effect and should request the secretariat to allocate a symbol to the document.

It was so decided.

72. Mr. FERNÁNDEZ BALLESTEROS (Uruguay) said he was concerned at the position of the secretariat personnel recruited for the Conference; their stability should be ensured and the promotion system to which they were entitled should be established. Recalling that in 1976, on the proposal of the Peruvian delegation, the Conference had recommended that the General Assembly should consider measures to ensure stability and continuity for the secretariat personnel, he asked the Special Representative of the Secretary-General whether any provision had been made to that effect and what the current situation was; he suggested that the Conference should repeat, for whatever purpose it might serve, the recommendation it had made to the General Assembly.

73. Mr. ZULETA (Special Representative of the Secretary-General) replied that the Secretary-General had conveyed to the General Assembly two years previously the

concern expressed by the Conference with regard to the stability of its secretariat personnel. The Assembly had adopted measures to ensure stability for the personnel for the following two years. It might be appropriate to re-examine the measures adopted at that time, in the light of subsequent developments. He would keep the Secretary-General informed of the Conference's concern about the matter.

74. The PRESIDENT assured the representative of Uruguay that he would personally do whatever was required. If the Conference nevertheless wished to repeat its recommendation, it was free to do so; otherwise the question could be raised at the next session of the General Assembly.

75. Mr. NJENGA (Kenya) emphasized that all delegations shared the concern expressed by the representative of Uruguay regarding the stability of the secretariat personnel. The progress made by the Conference had been rendered possible largely by the efforts of the personnel. He too wished to propose that the Conference should recommend to the General Assembly that it confirm the provisions ensuring stability and continuity for the secretariat personnel recruited for the Conference contained in the fifth preambular paragraph and paragraph 4 of resolution 31/63.

76. The PRESIDENT suggested that the Conference should adopt that proposal.

It was so decided.

Closure of the session

77. Mr. ZULETA (Special Representative of the Secretary-General) read out a message from the Secretary-General. The latter wished to stress the importance that the United Nations attached to the success of the Conference. Despite the difficulties encountered, very substantial progress had been made since the session in Caracas. The hard-core issues on which agreement was still needed had been clearly identified and he was pleased to note that the negotiations had focused constructively on those subjects. He was also gratified to see that, despite conflicting interests on the many different aspects encompassed by a comprehensive convention on the law of the sea, States had adhered to the mandate contained in resolution 2750 C (XXV) and subsequent General Assembly resolutions. He was confident that, if the spirit of goodwill was maintained, the delegations' negotiations would shortly lead to the production of a comprehensive and generally acceptable convention. The outcome of the Conference might have an influence far beyond the scope of the law of the sea, and he therefore expressed his sincere good wishes to all delegations for a successful outcome in their future deliberations.

78. After an exchange of courtesies, the PRESIDENT declared the seventh session of the Conference closed.

The meeting rose at 6:35 p.m.