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CONTENTS

Chairman: Mr. Otto R. BORCH (Denmark).

AGENDA ITEM 40 *(continued)*

Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea: report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction (A/9021, A/C.1/1035 and A/C.1/L.646)

1. Mr. OLCAY (Turkey): Mr. Chairman, I shall abide by both your appeals; I shall therefore refrain from extending my delegation's congratulations to you and to the other officers of the Committee, and I shall limit my brief remarks to the organizational aspect of the United Nations Conference on the Law of the Sea.

2. Organizational questions are always interwoven with substance. In a law-making conference such as the Conference on the Law of the Sea, where so many divergent national interests exist, this interrelation between organizational and substantive aspects is even more accentuated. My delegation's approach to the organizational questions is very flexible and is based exclusively upon the consideration of exploring the most efficient and expeditious arrangements for establishing a just and durable law of the sea. While seeking acceptable solutions to the organizational questions that are facing us, we should always keep in mind the special feature of the Conference that is going to be held in the near future. First of all, this Conference is not a codification conference but a law-making conference; and secondly, it is not a conference prepared by a body of legal experts such as the International Law Commission, but one prepared by a political body. So we need a functional and pragmatic approach to the organizational matters, one which would provide us with the most appropriate arrangements to carry out further preparatory work and facilitate an agreement.

3. Starting from those premises, my delegation, ever since the Geneva session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1972, has held the view that further preparation of the Conference should be done within the Conference itself, with the participation of all the States that are going to take part in the Conference. Our thinking was motivated by the necessity of ensuring that all the participant States would take part in the preparatory work at a relatively early stage, and then, further, by our doubts as to whether the sea-bed Committee was the most effective forum for carrying out further preparations. The experience we had at the last session of the Committee, in Geneva, has justified these doubts.

4. After listening to various statements in the contact group meetings and in the First Committee, we feel that there seems to be a broad acceptance of the fact that the preparatory work within the sea-bed Committee has reached a stage where no further progress can be achieved. If there is a divergence of views, it is rather on the question whether the present stage of preparation is adequate to go to the Conference. We do not think this difference of assessment of the results that we have achieved so far is insurmountable. Since it is inevitable that we shall have to meet more than once in order to complete the work of the Conference, we see no reason why the Conference itself should not carry out its own preparatory work or substantive work with the participation of all its membership. To entrust this task to the Conference would not hamper its chances of success, but on the contrary, as was stated by the Chairman of the Committee at its concluding meeting on 24 August 1973, would "... inject into the international community a sense of urgency and create a momentum that would carry us towards the conclusion of a treaty". I should also say that at this stage of our work we see little use in making distinctions between different sessions of the Conference. The Conference itself should make its own programme of work.

5. With these thoughts in mind, we favour holding the inaugural session of the Conference later this year as envisaged in General Assembly resolution 3029 (XXVII). However, the idea of having to split the inaugural session of the Conference raises some practical difficulties for my delegation, as it does, I understand, for many other delegations as well, and thus our preference goes to one session only, starting in the last week of November, if, of course, this is convenient for the Secretariat.

6. It is because of similar practical considerations that we are rather hesitant about subscribing to the view that the Conference should have two sessions in 1974, with a very

short interval between them. This would, in the view of my delegation, create additional burdens, particularly on the meagre resources of the developing countries. However, we would not object to such a programme of work if it promoted a compromise to bridge differing views and would lead to convening the Conference without further debate.

7. As to the venue of the Conference, my delegation, in the statement it made last year in this Committee, gave its support to Santiago. However, after listening yesterday to the statement of the representative of Chile *[1927th meeting]*, we believe that Vienna seems to be the most appropriate site for the Conference, if, of course, the Government of Austria is willing to be the host country.

8. We realize fully the significance and delicate nature of the question of invitations. It is our belief that it is important to ensure the participation of all States if we are to establish an effective and durable law of the sea. The highly political difficulties which the invitation issue raises are a source of concern for my delegation. We are fearful of the possibility that if an early agreement is not reached on this problem it may delay the decision of the General Assembly on other matters relating to the organization of the Conference.

9. However, it may be a stumbling-block for the Conference itself. We also believe that it is important for the Conference to be opened by a draft resolution adopted by consensus.

10. With all this in mind, we hope the invitation question may be agreed upon before the General Assembly deals with this matter. However, if this hope is not realized, we do not believe a decision on other matters which require immediate action should depend on the solution of the invitation problem. Therefore we consider favourably the amended paragraph 7 of the informal draft resolution distributed this morning.

11. In this connexion, may I also say that it would be correct to make a clear distinction between the invitation problem and the representation problem or problems, the latter being within the mandate of the Credentials Committee of the Conference.

12. In the making of the necessary organizational arrangements for the Conference, it is of importance for a successful outcome to take fully into account the highly complex and political nature of the Conference on the Law of the Sea and to consider it on its own merits. If and when a precedent is required for the structure of the Conference, and for other organizational matters as well, we should draw carefully upon the experience gained during the previous sessions of the sea-bed Committee, which in itself *is larger than many conferences. Precedents* other than that, such as those of the General Assembly or other previous conferences, should not be hastily applied in any aspect of our organizational work before they are scrupulously examined to determine whether they can adequately be adapted to the special characteristics of the Conference.

13. At this stage of our work I would only express our scepticism about basing the rules of procedure of a law-making conference upon those of previous codification conferences.

14. In conclusion, I should like to extend my delegation's appreciation to the Chairman of the sea-bed Committee, Mr. Amerasinghe, for taking the initiative of preparing the draft resolution and for making arduous efforts to achieve an agreement on it. That again proves his rare qualities and his ability to steer our fragile vessel in troubled waters without its sinking to the sea-bed and ocean floor, an ability we shall greatly need in our future work also.

15. Mr. DHARAT (Libyan Arab Republic): Mr. Chairman, allow me first of all to associate my delegation with the congratulations extended to you by previous speakers upon your election to the highest post of this Committee. My congratulations go also to the representatives of Pakistan and Madagascar on their election to the posts of Vice-Chairmen and to my good colleague Mr. de Soto of Peru on his election to the post of rapporteur.

16. At this stage of our deliberations my delegation would like to make some brief remarks on the procedural question before us. It is logical to commence my remarks by touching very quickly upon the question of the preparatory work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. Fortunately, my country has been a member of that Committee since its inception, and we have followed with keen interest its deliberations during the last few years. We have witnessed the many political and technical problems the Committee has had to face. Allow me to illustrate.

17. It is a committee of 91 members, each holding different views on the various issues before it. This problem has been made worse by the adoption of the consensus system as a method of conducting Committee business. The Committee has been working at a time of fast and fascinating technological progress, which every day provides us with new information. Because the Committee has been entrusted with dealing with several aspects of a new field–the marine field–many aspects of the Committee's responsibilities remain unclear. Moreover, its preparatory work was much more difficult than that done by the International Law Commission for the 1958 and 1960 United Nations Conferences on the Law of the Sea. It is enough to know that that International Law Commission is composed of a limited number of professional jurists and legal technicians.

18. However, despite those and other obstacles which confronted the sea-bed Committee, we cannot underestimate the fact that, under the prudent guidance of Ambassador Amerasinghe of Sri Lanka, that Committee has accomplished tangible results.

19. At this stage I do not intend to assess in detail the preparatory work done by the Committee, for it was eloquently covered by the Chairman of the sea-bed Committee and its Rapporteur when they spoke at the 1924th meeting. But I should like to state that the sea-bed Committee cannot do more than it has already done. We cannot expect any tangible progress from the Committee even if we decide to extend its mandate for one or two more sessions.

20. What was lacking to break the deadlock in the sea-bed Committee was political will on the part of representatives. In our view, that major obstacle can be overcome only by the Conference on the Law of the Sea—and that brings me to the second part of my statement, concerning the convening of the Conference.

21. To my delegation it appears that there is a general feeling that the Conference must start its work on the designated date—that is, the first session would be held in New York in November-December 1973 to deal with the organizational matters.

22. Concerning the substantive work of the Conference, it is my delegation's belief that it would be preferable to hold only one long session during the summer of 1974 in Geneva to deal with the important aspects of the Conference's work.

23. During the first substantive session, which could be of 8 or 10 weeks' duration, the Conference might start by devoting the first two or three weeks to completion of the preparatory work. Let me make it clear, however, that that does not mean that we should right now specifically designate the first part of the Conference for preparatory work, for that would lead us to confront many obstacles, one of which concerns the rules of procedure. The point my delegation wants to make clear is that during the organizational meetings we could decide to allocate two or three weeks of the summer session to completion of the preparatory work, with the participation of all States, at the same time allowing those States not members of the sea-bed Committee to make their views known. In our view, that approach would facilitate our work substantially.

24. Another point I should like to make concerns the rules of procedure of the forthcoming Conference. We agree with what has been proposed in the draft resolution informally circulated—that the Secretary-General should prepare appropriate rules of procedure for the Conference taking into account the views expressed in the sea-bed Committee and in the General Assembly. In our view, those rules must include the simple-majority voting system for procedural questions and the two-thirds-majority voting system for important questions. That is the best way to resolve conflicting issues and to break any deadlock that might arise. We should not allow any country or small group of countries to impede the Conference's work, which is aimed at the preservation of the sea and the sea-bed for peaceful purposes and the exploration and exploitation of the resources thereof for the benefit of mankind as a whole, taking into particular consideration the interests and needs of the developing countries.

25. Mr. NJENGA (Kenya): Mr. Chairman, despite this morning's reminder that "good wine needs no bush", my delegation cannot proceed without at the outset expressing its congratulations to you and the other officers of the Committee on your unanimous elections and to tell you that we have no doubt that you will be able to steer this Committee, and particularly this item, to a successful conclusion.

26. My delegation has had numerous opportunities to express its views on the substance of the issues on the law of the sea both before the General Assembly and before the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, in which Kenya has played an active role since the inception of the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and Ocean Floor. Kenya was a member of the *Ad Hoc* Committee and has continued to be a member of the sea-bed Committee, which replaced it, and consequently my delegation will in this intervention confine itself to procedural issues before the Committee on the forthcoming Conference on the Law of the Sea.

27. Before I do so, however, let me express my delegation's heartfelt thanks to Mr. Amerasinghe, who successfully steered the work of the sea-bed Committee and saw it through many complex and difficult situations. Throughout the period of his chairmanship, Ambassador Amerasinghe has been the Committee's guiding light and a tower of strength and determination, and it is not an exaggeration to say that without his leadership the Committee could not have managed, in the relatively short period of its existence, to arrive at the stage where we can seriously consider the convening of the Third United Nations Conference on the Law of the Sea.

28. Our gratitude goes also to all the hard-working and efficient members of the Bureau, who have co-operated with all the members of the Committee and thus earned the deepest respect of all of us.

29. Under resolution 3029 A (XXVII) of 18 December 1972, the General Assembly reaffirmed the mandate of the Committee and requested it to hold two sessions in 1973 with a view to completing its preparatory work and to submit a report with recommendations to the General Assembly at its current session and, in the light of the decision to be taken following the review of the progress of the preparatory work, to the Conference.

30. As you are aware, the Committee did in fact hold two sessions—one in Geneva and one in New York—for a total of 13 weeks; but—and this is also common knowledge—at the end of the session in Geneva there was no agreement on whether the preparatory work had been completed or not. This controversy has continued here, and it is thus for the General Assembly and the First Committee to decide on this vital issue, upon which the future of a successful United Nations conference on the law of the sea depends.

31. While, no doubt, honest men can and in fact have been known to differ on the interpretation of a set of circumstances, my delegation entertains no doubt that the preparatory work achieved so far is sufficient to justify adhering to the programme of the Conference agreed upon under the resolution of last year which I have already mentioned. In the opinion of the Kenya delegation, adequacy of the work does not depend on the existence of a common text or even on a set of alternatives to which the Conference is to address itself. If, in fact, as has been demanded by some delegations here, it was possible to work out agreed articles in the sea-bed preparatory committee, there would be really no need to talk about holding the Third United Nations Conference on the Law of the Sea for 10 weeks. The whole thing could be disposed of in the first or inaugural session of two weeks.

32. But to expect such a text, unanimously agreed, or even agreed by consensus—I have learned here that there is a difference between the two—to expect such a text, given the decision-taking procedures under which the sea-bed Committee has traditionally operated, is to expect the impossible.

33. The experience of the delegation of Kenya in the past six years of hard and arduous negotiations has been that through consensus the only results that can be achieved on this subject would be those which maintain the *status quo*, based as it is on the imposition of the will of a strong and powerful minority which has traditionally benefited from the use and, in most cases, depredation of the oceans.

34. In the view of my delegation, adequate preparation consists in identifying the relevant issue or issues to be dealt with and in identifying the interests claims and counter-claims of the parties to the conference, represented by the various interested groups involved. I would respectfully submit that these two major tasks for the preparatory committee have been fully achieved.

35. The adoption of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction during the twenty-fifth commemorative session of the General Assembly in 1970 *[resolution 2749 (XXV)]*, and the adoption of the list of subjects and issues[1] which was formally approved in 1972 accomplished the first task—that of identifying the issue or issues. The work that has been accomplished, both before and since the list was approved, and which is adequately reflected in the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction *[A/9021]*, in its six volumes, clearly indicates that the second requirement—that of showing the interests involved—has also been accomplished.

36. Proposals and counter-proposals have been made, and the task of putting them all together, including the draft articles, has taken six volumes of the report. Now, if that is not preparatory work, I do not know what is. What has not been done at present is not the preparatory work. I respectfully submit that what has not been accomplished is meaningful negotiation. This, I think, is the task of the Conference.

37. It is for this reason that my delegation will strongly resist any further attempts to postpone the convening of that Conference, as was agreed at the last session of the General Assembly.

38. We shall also resist any attempt to convert the forthcoming session of the Conference on the Law of the Sea into a preparatory session, because we do not believe that any further preparatory session, whether at the Conference level or at the sea-bed Committee level, will advance our work much beyond where we are at present, given the necessity to follow the consensus method which we have been following up to now.

39. Consequently, in our opinion, a decision to hold a so-called preparatory session, or to continue the sea-bed Committee, would amount to a first step towards an indefinite, perennial conference, which most of the developing countries would lack both the funds and the personnel to indulge in.

40. My delegation is in full agreement with much of what is contained in the informal draft resolution circulated by the Chairman of the sea-bed Committee, dated 17 October—particularly operative paragraph 2, which:

> "*Confirms* [the decision of the General Assembly] in resolution 3029 A (XXVII) of 18 December 1972, to convene the first session of the Third United Nations Conference on the Law of the Sea in New York in November and December 1973 for the purpose of dealing with organizational [and procedural] matters . . .".

41. The time has indeed come to settle definitively the date for the holding of the inaugural session of that Conference. My delegation sees no reason why the Conference cannot commence on Monday, 26 November, and run through to Saturday, 8 December 1973, should that be considered necessary.

42. My delegation, however, could go along with any other dates considered more convenient, but will not go along with any proposal to split the first session in two, because we do not see any practical purpose for that, and it would cause considerable difficulties to many delegations, particularly those that have come from outside New York.

43. My delegation has found itself unable to support operative paragraphs 3 and 4, which originally were also contained in the informal draft resolution presented on 10 October and were repeated in that presented on 17 October and which call for the convening of two sessions of the Conference in 1974 for the purpose of dealing with the substantive work. Under this arrangement the first session is scheduled to be held in 1974 and the second session of eight weeks in the summer of the same year. The holding of two sessions would place a strain on many Governments, particularly those from the developing countries, from the standpoint of both financial and manpower resources.

44. It might be argued that traditionally we have always had two sessions of the sea-bed Committee and that therefore this argument of financial or manpower requirements does not hold water, but we have advanced from the stage of preparation to the stage of the Conference where many more delegations will be involved, particularly higher-powered representatives of their respective Governments who cannot be spared from their duties for such a long period abroad. Besides, the second session would, by and large, almost certainly be wasted in so-called further preparatory work since psychologically all delegations would feel that they would still have another chance in the summer.

45. Should it be felt that more time is required in 1974, my delegation could support one continuous session of up to 10 weeks, during the summer, as is now proposed in the note to the informal draft resolution of 17 October from the Chairman of the sea-bed Committee, which, in my

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[1] See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21*, para. 23.

delegation's opinion, should replace operative paragraphs 4 and 5 of that draft resolution.

46. As for the venue of the Conference, my delegation is, and has always been, of the view that the Conference cannot afford to be held any place where all delegations cannot feel welcome because of political or other reasons. Consequently, and after listening to the representative of Chile yesterday *[1927th meeting]*, as well as other representatives who have addressed themselves on the issue of Santiago as a site for the Conference, and since we feel we do not have any other generally acceptable invitations, my delegation considers that the summer session of the Conference could very easily be held in Geneva. My delegation agrees that the Conference should have as its mandate the broad framework spelled out in operative paragraph 3 of the informal draft resolution presented by the Chairman to take into account all the subjects and issues relating to the law of the sea. It is the view of my delegation, however, that the aim of the Conference should be to adopt a single comprehensive convention dealing with all matters relating to the law of the sea. We cannot afford to have a proliferation of conventions where every Government will be able to pick and choose what convention to adopt or not. We have always emphasized the close interrelationship of the various aspects of the law of the sea and the basic unity of the subject. I think that this was one of the failings of the 1958 Geneva conventions on the law of the sea, because so far we find that States have tended to ratify or to accede to those parts they liked, leaving the rest though they do not refrain from quoting from them now and then.

47. On the question of participants, my delegation considers that the Conference on the Law of the Sea should deal with issues which are of vital importance to all States. It is therefore necessary that all States should be invited to participate in the Conference irrespective of their political orientation and irrespective of what any State or group of States may think of their Government. Consequently, my delegation will only support a formulation which allows the fullest possible participation by the whole international community.

48. In this connexion we consider that the formulations suggested in the informal draft resolution prepared by the Chairman of the Committee, which, after using the so-called Vienna formula, also states that other States to be specifically mentioned shall be invited, will go a long way to meeting our preoccupation. The delegation of Kenya intends at the appropriate time to suggest under this paragraph the invitation of the new State of Guinea-Bissau, which has recently emerged from the shackles of Portuguese colonialism. It is our hope that this will command the support of the large majority of the General Assembly and will thus enable the new State of Guinea-Bissau to represent its people at the Conference, since the Portuguese can no longer claim by any stretch of the imagination to represent the people of Guinea-Bissau.

49. My delegation is also in full agreement with operative paragraph 9 of the draft proposal that the Secretary-General shall be the Secretary-General of the Conference and shall appoint a special representative and the necessary staff to assist the Conference. It is our hope, however, that the Secretary-General will bear in mind the necessity of having fair geographical representation in the secretariat of the Conference, and it is also our hope that Africa, which is the single largest geographical group, shall have its rightful share of the secretariat of the Conference.

50. My delegation also agrees with operative paragraph 10 whereby the Secretary-General is requested to prepare for the Conference appropriate draft rules of procedure for consideration and approval at the organizational session of the Conference. I think this is the only right and proper method we can follow in order to have a basic paper to discuss and to adopt the rules of procedure. However, we wish to emphasize that these draft rules of procedure must be based on those of previous conferences. This is particularly so as far as decision-taking aspects are concerned. In this connexion my delegation for one would resist any attempt, such as has been mooted, to introduce consensus procedures for the Conference on the Law of the Sea and would insist that the usual two-thirds-majority rule for adopting substantive provisions at the Conference be adopted. This does not in any case mean that we should start voting the very first day we get to Geneva. It does not even mean that we should necessarily vote the first week or two. What it means is that voting shall not be ruled out if the Committee considers that the situation is ripe for the procedure of voting and the taking of decisions. It is only in this way that we can avoid the tyranny of the majority and the equally reprehensible veto of a minority—by avoiding the so-called consensus of procedure—and thus ensure that the provisions adopted command the broadest support. Equality of States is completely inconsistent with the power of any State to veto proposals commanding the support of an overwhelming number of States such as two thirds, as would be the case with a consensus procedure.

51. At the 1928th meeting, the Chairman of the sea-bed Committee, Mr. Amerasinghe, mentioned the possibility of a "gentlemen's agreement" on how negotiations shall be conducted with the utmost effort to reach general agreement without resorting to a vote.

52. My delegation will examine any gentlemen's agreement that might be put formally in writing and we shall examine it sympathetically because it is not our aim to force down the throat of anybody provisions on the future of the law of the sea. We expect and hope that all delegations will be able to negotiate in good faith and obtain a new system that is generally accepted. But one of the provisions in this gentlemen's agreement that was mentioned to us was—and I hope I understood the Ambassador correctly—that there would be no voting on procedural matters unless it is unavoidable. I do not know why we should be so strict about voting on procedural matters. I think it is one of the quickest ways of resolving procedural matters which tend to waste a lot of time. So perhaps in due course Mr. Amerasinghe will be able to explain to us why he attaches so much importance to consensus on procedural matters.

53. Turning to other issues, we fully endorse the proposal in operative paragraphs 11 and 12 of the informal draft resolution which provide a flexible deadline or target dates for the submission of proposals, views and draft articles by all States participating in the Conference, during the

Conference and even before it starts. We hope that all the States which have not already done so, and particularly States not members of the sea-bed Committee, will utilize this opportunity to submit concrete proposals so that when the substantive part of the Conference begins we shall manage to proceed in a business-like manner.

54. Finally, it is with mixed feelings that we agree to dissolve the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction as has been proposed in the final paragraph, because that Committee, apart from providing an opportunity for lifelong friendships, has also provided all of us with a unique opportunity to learn and consider the possible ways of reconciling conflicting interests in the utilization of the oceans and thus open a new chapter in international co-operation without imposed hegemony by those to whom the sea has in effect belonged. We hope that all those represented here will seize the opportunity that has been offered to reformulate the law of the sea at the forthcoming Conference in a spirit of compromise and in a serious manner so as to create a just and durable structure for all mankind. The delegation of Kenya will look forward to the fullest co-operation with all the other delegations at the forthcoming Conference to achieve this noble and worthwhile objective.

55. Mr. FUENTES IBAÑEZ (Bolivia) *(interpretation from Spanish)*: Mr. Chairman, speaking for the first time in this Committee, my first words must be to express to you and to the members of the Bureau our congratulations on your fitting election and also the sincere desire of my delegation to contribute with a determined, albeit modest, contribution to the success of the intricate work before us.

56. In accordance with your recommendations and bearing in mind the limited time available, I shall limit myself to very brief comments and then list the procedural questions that my delegation considers should be borne in mind when planning our work.

57. My first impression when examining the report of the Committee was that this is a broad and substantive document that can serve as a sufficient basis for the establishment of a possible strategy. My delegation believes that in this report potentially we can find all the necessary material to start as soon as possible on the preparatory work. The gaps that exist can be bridged without difficulty in the course of the next stage, that is, the preparatory part of the Conference, either through consultation with Governments as planned, or through the negotiations that are taking place between the regional groups and the groups of countries that have similar geographical and economic situations. These consultations will be complemented later by the opinions of those States that did not take part in the previous conferences. The participation of these States is very important since they could not be absent from a conference where we are to study and debate the legal rules governing the exploitation of assets that are the common heritage of mankind, and adapt their utilization, as the Chairman of the sea-bed Committee, Ambassador Amerasinghe, so wisely put it in the General Assembly, to:

> "... the moral values, ethical standards and political principles of the twentieth century."

58. The fear expressed by some delegations regarding the risk of a failure if we went to the forthcoming Conference without consolidated or previously agreed texts and draft conventions suitable for adoption by a consensus obviously represents a sensible and very laudable position. But at the same time I am haunted by fear of the knowledge that the corporations with their economic power and technological strength, are waiting in the wings and have already made large investments in the investigation and exploration of the mineral resources of the sea-bed, as has been explained by the representative of Sri Lanka.

59. And thus I am forced to wonder: Will they wait for the international community to set the rules of the game before adopting the legal rules that will make the operative phase feasible? Can delay not endanger the achievements already chalked up and also unleash controversial and conflictive situations that may jeopardize what has thus far been elaborated?

60. But to shorten my statement as much as possible, I shall summarize the views of my delegation as follows: first, we consider it necessary that the greatest effort be made to progress in the preparatory work of the Third Conference at a session to be held in November and December of this year; secondly, that in 1974 a single session be held in order to define the work clearly and avoid causing difficulties for the less well-endowed countries. This session might last for 8 to 10 weeks, even though that might seem too lengthy to some delegations; thirdly, that at the same time as we decide upon the date of the Third Conference, we should request the Secretary-General to invite all the States that did not participate at previous conferences; fourthly, that the agenda be based on the list of subjects and issues; and fifthly, that the spirit of justice and equity to benefit the less developed countries and particularly the land-locked countries be maintained.

61. These principles have already been defined by the Committee.

62. Mr. ZEGERS (Chile) *(interpretation from Spanish)*: At the end of six years of work by the sea-bed Committee, which has been preparing the Third United Nations Conference on the Law of the Sea, my delegation would like to make some general comments on the report submitted by that Committee and on the organization of the forthcoming Conference.

63. The report before us represents a task that has taken a long time to accomplish and is of profound significance. Much water has flowed under the bridge since the first *Ad Hoc* Committee was born in 1968, following the initiative of Malta and its farsighted Mr. Arvid Pardo. From a preliminary study on the peaceful uses of the sea-bed to the elaboration of a veritable new law of the sea in keeping with the present day, fruitful work has been done politically, economically and legally.

64. At this moment when the sea-bed Committee is about to be disbanded, I should like to pay a heartfelt tribute to the Chairman, Ambassador Amerasinghe, to whom we greatly owe what my delegation would term fruitful results in the consideration of one of the most important and far-reaching subjects that the United Nations has ever had

to tackle. I should like as well to pay a tribute to the Chairmen of the Sub-Committees, Ambassadors Engo of Cameroon, Galindo Pohl of El Salvador and van der Essen of Belgium, and to the Secretariat in the persons of the Under-Secretary-General and Legal Counsel, Mr. Stavropoulos, and the Secretary of the Committee, Mr. David Hall.

65. The work done is of major proportions. With regard to the régime of the sea-bed, in an entirely new field, an entirely new body of law is being created. Where in the past there was a legal vacuum—as was recognized by the General Assembly—in that whole wide and vast field, along that entirely new frontier of the sea-bed, which covers more than two thirds of the face of the globe and which contains immense resources, new principles and embryonic rules have been born.

66. The report before us recalls resolution 2749 (XXV), by which was adopted a declaration of principles that must underlie the treaty to be proclaimed by the Conference on the Law of the Sea. To this Declaration of Principles must now be added a new draft treaty on the sea-bed, together with a series of alternative proposals, which is to be found in the annex of the report, in volume II. This contains real and viable formulas on which the Conference can decide, with respect to the régime and the machinery for the sea-bed.

67. Regarding the activities taking place at the moment and to which my delegation has referred both at the present session of the General Assembly and during the sessions of the sea-bed Committee since 1971, and to which the Chairman of the sea-bed Committee has also referred in this Committee when mention was made of the activities of Howard Hughes, I would say that both the Declaration of Principles and the moratorium resolution have both, either implicitly or explicitly, stated that the exploitation of the sea-bed must await the establishment of an international régime through a treaty.

68. The activities at present being carried on by private or state enterprises of all the technologically advanced nations make the adoption of a treaty urgent. The study made by the Secretariat, on the request of the sea-bed Committee, attests to the fact that that treaty might be applied provisionally without our awaiting its full ratification.

69. As far as the sea-bed is concerned, which was the original mandate of the sea-bed Committee, I think we can say that a conference has been prepared and that it has been successfully prepared. But in the course of the negotiations the subject of the sea-bed was extended to cover the law of the sea as a whole. It was quite rightly considered that the law of the sea, as the Assembly had previously declared, is an indivisible legal and political entity. For this reason, the Assembly itself entrusted the sea-bed Committee with the task of preparing draft articles on practically the entire body of the law of the sea, in the belief that the law as a whole should be brought into line *with the new political and technological* world of the 1970s.

70. It is a world which has seen the emergence of more than 40 new independent States since the last Conference on the Law of the Sea was held, and which has applied such advanced technology that the marine and underwater resources can today be exploited at any depth and at any distance from the coast.

71. It is true that the sea-bed Committee has not been able to submit an organic set of treaty articles. But it is equally true, as a number of speakers have said, that all the fundamental issues of international law have in fact been amply and thoroughly debated and that certain main lines for a possible international agreement have emerged from the discussions and reports of the sea-bed Committee.

72. If one carefully reads the report of the Committee, one becomes aware, particularly in the report of Sub-Committee II, that there is reason to believe that an agreement may exist on what has been termed a political blueprint for an international solution. The Chairman of the Committee and other speakers were quite justified when they said that the preparatory work was not done, as at earlier conferences, by a technical and juridical body, the International Law Commission, but rather by an organ composed of political representatives of States. The final stage of negotiation is still pending. But certain elements point to the feasibility of a political blueprint on which a solution can be based.

73. The report of Sub-Committee II, in paragraphs 52 and 66, speaks of a new legal concept, described as the "economic zone". This would be a zone of up to 200 miles under the jurisdiction of the State, consisting of mainly economic features, with freedom of navigation and overflights, a zone where certain powers would be exercised by the coastal State, but where, nevertheless, third States could enjoy freedom of communication.

74. This new legal concept is passing into international custom. I heard that the representative of Algeria had recently requested the publication of the agreement arrived at by the non-aligned States at Algiers. Eighty-one States from different continents met at Algiers and declared that they supported the recognition of the rights of coastal States over the seas adjacent to their coasts and their soil and subsoil within zones of national jurisdiction of up to 200 nautical miles measured from the baseline, for the purpose of exploiting the natural resources and of protecting the other related interests of the peoples of the coastal States without prejudice, on the one hand, to freedom of navigation and overflight where applicable and, on the other, to the régime of the continental shelf.

75. The Algiers agreement, therefore, as we see, only ratifies the earlier definitions that had been adopted by the entire African continent in the Declaration of the Organization of African Unity; adopted by almost the entire American continent, except for two or three countries, at a series of meetings; adopted also by the main, if not all, countries of Oceania; and, furthermore, adopted by a goodly number of the Asian countries, through the Afro-Asian Legal Consultative Committee, and by no less than 10 countries of Western Europe and socialist Europe.

76. This concept—call it what you will—has now become the axis of the international political solution, so much so that it might be termed a nascent custom in accordance

with the theory held by many professors, Litzenstein and Clingan, Burke and Friedmann to a certain extent, and recently by the Swedish writer, Karen Jørgensen. According to their view, international custom can be formed by a process of unilateral declarations and the response given to them by the international community as well as the official statement of representatives of States at international meetings.

77. If we consider these political statements and the international custom being formed, we have then to deduce that the blueprint for an international political solution is gradually taking shape and that if States had the chance, the political will and the forum to negotiate their differences seriously, a just and realistic legal system could be established, in keeping with our day.

78. I have analysed matters in this way because I wanted to draw certain conclusions regarding our future work. My delegation agrees with others who feel that, in accordance with resolution 3029 (XXVII), we should at this present session constitute the Conference on the Law of the Sea. My delegation further considers that next year a single session of about eight to ten weeks' duration should be held some time between May and August, and I say "some time" between May and August because the earlier period should be reserved for preparatory regional meetings of immense value, such as the planned Nairobi session of the Group of 77, tentatively scheduled for March. These meetings and consultations will facilitate enormously the negotiations and the discussions that will be necessary if the Conference is to succeed. Generally speaking, my delegation considers that the draft submitted by the Chairman of the Committee, and defended by him with his usual skill and vigour, is a satisfactory document. In some places it may need touching up, but basically we have a text that the General Assembly could approve.

79. In the light of what I have just said, I should now like to refer to some other procedural aspects. If we are going to embark now on the period of thorough and substantive negotiations over a period of eight to ten weeks at a site yet to be decided upon, suitable rules of procedure for these meetings will have to be prepared. My delegation agrees that the ideal system might be for all agreements to be arrived at by consensus, but this may well be impossible. Therefore the rules of procedure will have to set out the classic terms of voting: on substantive questions, a simple majority in committee and two-thirds in plenary; on procedural questions–and here I entirely agree with the delegation of Kenya–there should be votes by simple majority. Consensus should be practised, but it should be on the basis of a gentlemen's agreement, and the vote would be difficult but not necessarily impossible. Within these two extremes we might well achieve the ideal that everybody negotiates and that, at the same time, results which are generally acceptable are arrived at.

80. As far as the agenda is concerned, my delegation considers that the list of subjects and issues could serve as an excellent basis, since it has been approved by consensus by all members of the sea-bed Committee.

81. We believe that the maximum number of States should participate since the law of the sea is and should be universal.

82. Concerning the secretariat, those who have devotedly and successfully worked on the subject during the last two years should be retained. But, of course, as some have said, we may need to expand the secretariat; and, as the representative of the Secretary-General has pointed out at previous sessions, new officers from developing countries will be joining the secretariat.

83. Generally speaking, these are the comments which my delegation wished to make at the present stage of our debate. I think that we should feel gratified that within so short a time we are rapidly drawing close to a consensus regarding procedure on the outstandingly important Third United Nations Conference on the Law of the Sea which is to begin its substantive work next year.

84. Mr. WYZNER (Poland): Mr. Chairman, may I at the outset express my delegation's satisfaction in the fact that the work and success of the First Committee have been placed in the hands of one whom we all respect as an outstanding and experienced diplomat.

85. The time has come for our Committee to be confronted with crucial decisions concerning the future work on the law of the sea and in particular those with regard to the time and organization of the forthcoming Third United Nations Conference on the Law of the Sea.

86. Indeed, these decisions will have great significance for the possible success or failure of the Conference. That is why, while taking them, it is necessary to consider carefully the situation in which the Conference is to be convened and, in particular, to make an evaluation of the preparatory work done by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, as presented to us by the Committee's Chairman, Mr. Amerasinghe, whose contribution to the work done and results achieved we all value very highly, and by Mr. Vella, the able Rapporteur at the 1924th meeting.

87. The character, scope and procedure of the future conference should be shaped, at least to a considerable degree, on the basis of the debates held, as well as the achievements and failures of the sea-bed Committee. Unfortunately, notwithstanding its positive accomplishments, the preparatory work done by the Committee cannot be, in the opinion of my delegation, considered sufficient to undertake the realization of the broad tasks envisaged for the Third United Nations Conference on the Law of the Sea. In particular, Sub-Committee II, which was supposed to embark upon the preparatory work concerning the most important and comprehensive parts of the law of the sea, was not able to pass the initial stage of its work: that is, the preparation of comparative tables of the different proposals submitted. Unless renewed efforts are undertaken, we are afraid that it would be an extremely difficult, or even impossible, task for the forthcoming Conference to agree on conventional provisions constituting a new body of the law of the sea.

88. We fully recognize that the technological and scientific progress resulting in the multiplication of uses of the marine environment, as well as new economic and political developments, have made the adjustment of many rules of

the law of the sea to the new situation desirable and, in some cases, even necessary. Moreover, there are new uses of the sea areas which are not sufficiently regulated by the existing rules of international law. Therefore, in our opinion, the forthcoming Conference should concentrate its efforts primarily on those problems which have not yet been fully resolved.

89. One of the necessary prerequisites and conditions for the establishment of a new set of viable rules of the law of the sea is that this new law should be universally agreed upon and accepted. It may be useful to recall that the idea of universality and of general acceptance of the new law of the sea has been clearly expressed in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction *[resolution 2749 (XXV)]*. Such a general acceptance of the new law of the sea would be possible only if, in the course of its elaboration, due account is given to the basic and vital interests of different groups of States. It goes without saying that the future Conference may result in success only if the will of one group of States is not imposed on the other members of the international community.

90. In other words, the achievement of a genuine and reasonable compromise and of a wide-range agreement at the Conference is the most important prerequisite for the general acceptance and universality of the new law, and as such should be properly reflected in the draft resolution which this Committee is going to approve, as stipulated by, among others, the representative of the Soviet Union *[1928th meeting]*.

91. At this juncture, I would like to emphasize that, on many occasions, Poland has proved in the Committee its readiness to take into consideration the legitimate interests and needs of other States and, in particular, the interests of the developing countries of Africa, Asia and Latin America. Consequently, we expect that other States will show similar understanding of our basic interests and those of other States.

92. So far, I have strictly adhered to your appeal, Mr. Chairman, and have limited my remarks to procedural questions. With your permission, however, I should like very briefly to deviate from this line in order to draw the attention of representatives to document A/C.1/1035, which contains a letter addressed to you, Sir, by the Chairman of my delegation, Mr. Trepczynski, as well as the text of the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts.

93. Since unilateral action by any country does not offer practical means for securing the rational exploitation and conservation of fish stocks, Poland has for the last several years shown particular interest in elaborating, together with other States, a system which would ensure the fulfilment of these goals through the strengthening of regional fishery organizations.

94. Proposals to this effect have been put forward by the Polish delegation in the sea-bed Committee. Now I am pleased to inform my colleagues that, on my country's initiative, the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts was signed in Gdansk on 13 September this year by all the Baltic States, that is to say, the Kingdom of Denmark, the Republic of Finland, the German Democratic Republic, the Federal Republic of Germany, the Polish People's Republic, the Kingdom of Sweden and the Union of Soviet Socialist Republics.

95. May I point out very briefly that under the Convention the parties undertake to co-operate closely with a view to preserving and increasing the living resources of the Baltic Sea and obtaining the optimum yield, and, in particular, with a view to expanding and co-ordinating studies towards these ends. The Convention also provides for the establishment in Warsaw of an international Baltic Sea fishery commission, which will secure application in the Baltic Sea of all modern and effective measures of rational conservation of fish stocks based on results of scientific research and knowledge.

96. Since the Gdansk Convention may perhaps be of some assistance in finding new solutions to the most urgent marine problems in other regions of the world, the Polish delegation, acting in consultation with all other parties, has taken the liberty of submitting its text for circulation in document A/C.1/1035, as I have already mentioned.

97. To conclude my brief remarks, I should like to return for a moment to our starting-point, that is, to the assessment of the preparatory work done for the future Conference on the Law of the Sea. My delegation has always considered very careful preparatory work the foremost prerequisite of a successful conference.

98. The experience of many previous diplomatic conferences, including the latest United Nations Conference on the Law of Treaties at Vienna, in which many of us were privileged to participate, has demonstrated that not even many years of hard work by the members of the International Law Commission nor the preparation of complete draft articles of a future convention has been sufficient to provide easy or automatic success, although it made the work of the respective conferences much easier and more rewarding.

99. It has generally been admitted in the course of our discussion that the preparatory work undertaken by the sea-bed Committee is far from being completed and that in practice not a single set of articles has been prepared for consideration by the Conference. We share the views of a number of delegations, including those of Peru and Bolivia, that in the absence of any such text as a possible basis for consideration by the Conference there is an ominous risk of failure. Taking into account the existing situation, my delegation agrees with those who favour the continuation of preparatory work, in the most suitable way, in order to obtain the results which might serve as a proper basis for consideration at the future Conference.

100. At the same time, we are not willing to accept any discriminatory formula for participation in the Conference. It has always been the position of my delegation that universal participation should be permitted in any world-wide diplomatic conference whose purpose is the codification and progressive development of international law.

101. Only a conference preceded by careful preparatory work and convened on a basis of universal participation and envisaging decisions agreed upon and adhered to by wide sectors of the international community can be expected to prepare generally acceptable instruments which will become new sources of international law in that vitally important area of human activities.

102. Those are the considerations which will guide my delegation in its attitude towards any draft resolution to be discussed by the First Committee. Accordingly, we regret to state that the preliminary draft resolution submitted by Mr. Amerasinghe cannot in its present form meet with the support of my delegation.

103. Mr. BEESLEY (Canada): Mr. Chairman, when I spoke the other day rather briefly I heeded your admonition and did not offer you congratulations, and I shall not take up the time of the Committee to do so today except to note that your performance is adequate evidence of how fortunate we are in having you to guide our deliberations—and the more so because we seem to be having some difficulty in coming to grips with the problem facing us.

104. Before I comment on the problem as my delegation sees it, and the kind of solution towards which we might work, I should like to take this opportunity to echo the words of many other delegations concerning the extraordinary debt of gratitude we owe to Mr. Amerasinghe and the other officers of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, who have worked with him so consistently and so tirelessly for the common good. If one comment of a general nature can be made about the sea-bed Committee, it is, of course, that it is representative in character, and if that is so—and it was deliberately chosen so as to represent the membership of the United Nations—then it must be accepted that although it has worked slowly and with less success than many of us would have wished, it has worked in a spirit of goodwill, which, in the view of my delegation, should be taken into account in considering the results of its labours and, indeed, in considering the prospects for future success.

105. In the view of my delegation, a number of issues have thus far been raised in the debate to which we must address our attention. One of these is the degree of preparation for the Conference we are now considering holding. A second question, which is not the same as the one I have just stated, is the degree of agreement which exists among Member States on the kind of solution we might achieve.

106. Closely connected with those two questions is a third issue which is in the nature of the task that was handed over to the sea-bed Committee—as it has continued to be called—and the extent to which it has met the particular requirements of its task within its own mandate.

107. A fourth question, to which we must address ourselves, although not with a view to reaching a definitive solution in this particular debate, is the kind of procedures we might envisage for the Conference when it gets under way.

108. A fifth issue—and the main one facing us—which raises the question of the kind of conclusion we must draw from an analysis of the foregoing considerations, is the timing and indeed the nature of the Conference, which we are to begin later this year with a procedural session, followed by a substantive session to be held next year.

109. Certain further issues are, in the view of my delegation, closely related to that particular decision, and we shall take the liberty of offering some comments on them in response to views we have heard. Those issues we would outline as being the essential needs of the future law if it is to meet the requirements of the international community, and finally, the question of how long we have to pursue our labours and what are the possible problems should we allow further obstacles to get in our way.

110. That is a fairly long list of issues which appear to require some consideration in this particular debate. I shall try to deal with them, however, as briefly as possible.

111. In the view of my delegation, it is wholly legitimate for the representatives of the Soviet Union and Poland—and others, such as the representatives of Brazil, Peru and Bolivia—to ask us how far we are really prepared for the holding of this Conference. We all know that we have been working on this range of complex, difficult and often divisive issues for six years, with respect to some issues, and a good three years with respect to others. Since the purpose of this debate is to determine whether we have reached a sufficient degree of preparation so that we can make the final decision to move into the Conference, then obviously we must address ourselves to that question, and it is not surprising that there are differences of view concerning the degree of our preparation.

112. We fully respect the views of those delegations which do not consider that we are adequately prepared. My delegation, however, does not share that view. In our opinion, we have gone virtually as far as we can go, short of actually beginning the Conference itself. We have said on other occasions that it is essential to take into account the fact that not all the preparatory work for the Conference on the Law of the Sea has gone on in the sea-bed Committee. We have heard just recently from the representative of Chile, and earlier from the representative of Algeria *[1927th meeting]*, concerning the recent and extremely important Conference of Heads of State or Government of Non-Aligned Countries, during which some 65 States Members of the United Nations affirmed certain principles *[see A/C.1/L.646]* that we have been discussing in our deliberations. We have heard from other representatives of the forthcoming discussions in Nairobi, and we know of earlier such meetings. We know of the discussions in the Cameroon, the African States Regional Seminar on the Law of the Sea, held at Yaoundé,[2] we know of the Declaration of Santo Domingo approved by the Specialized Conference of the Caribbean Countries on Problems of the Sea.[3] We know the history of those discussions and the part they have played in enabling us to formulate actual concepts and principles in the sea-bed Committee subsequent to those regional and, also, broader meetings.

113. Against that background, it is very difficult to give a definitive opinion, quite obviously, and opinions will differ,

2 *Ibid.*, annex I, sect. 3.

3 *Ibid.*, sect. 2.

but it is our view that we have gone as far as it is possible to go in our preparations without actually getting into the negotiating process which can ensue only when all Member States are present. Indeed, it seems to my delegation that it is not only too much to expect but improper to expect that we should go further in preparation, short of the actual negotiating atmosphere and negotiating forum when plenipotentiaries meet to decide on these issues. I do not wish to dwell on this point, but it is worth noting that, as other delegations have pointed out, we are not talking about the International Law Commission, a group of jurists working on essentially legal issues; nor has this been a plenipotentiary conference addressing itself to the solution of particular problems. We have been a preparatory committee. It is quite clear that we have not produced complete solutions on any single issue. It is equally true, however, as has been pointed out by a number of speakers, particularly the representatives of Kenya and Chile this afternoon, that we have identified the major issues. A glance at the list of issues, I think, illustrates this. We have gone further; we have enabled delegations in the sea-bed Committee and in our other United Nations debates to think through their positions on these issues and express them, and express them sometimes singly and sometimes as a group. But we are no longer in doubt as to our respective positions on the major issues facing us. A glance at the summary records of our debates in the First Committee, or at the reports of the sea-bed Committee itself, is complete and adequate evidence of this. We have gone further, however; we have produced alternative texts on those issues that we have identified and, although we have no single text, to my knowledge, on any particular issue, we do have outlined before us a series of options. And although it may be that no single one of those options is the one that we shall ultimately select, it is none the less true that we do have the options facing us, and from that point of view we are adequately prepared.

114. Turning now to the next question, the degree of our agreement, I think it is quite true that we are far from agreement on many issues. But my delegation does not consider that to be the same question at all as the degree of our preparation. If we were to hold up the Conference until we were completely agreed on all issues, then of course we would not need the Conference; we would need only to open the treaty for signature. It is quite evident that we have a very long and difficult negotiating process facing us. This does not surprise my delegation, as we have always known that to be the case. It was quite properly pointed out to us by the representative of the Soviet Union at the 1928th meeting that a number of important issues still require solution. This was true prior to the 1958 Conference, yet none the less a very large measure of agreement was reached at that Conference, whether or not its results are still relevant in the view of delegations here today.

115. I think it is important also to bear in mind that we are considering approaches so new, so radical, so far-reaching that it is not surprising that agreement does not come readily. In every Government concerned with this matter—and all Governments are—it is necessary to make searching examinations concerning our respective national interests and concerning the kinds of approaches we should follow in order not only to fulfil our own national aspirations but also to attempt to seek that point at which our interests and the interests of other States and of the international community as a whole coincide. In the view of my own delegation, we are very far along the path in seeking this area of common ground.

116. At the same time, it is necessary to note that we are not talking about a single issue such as the breadth of the territorial sea or the kind of fishing rights that might be enjoyed by coastal States. In the view of my delegation at least, we are talking about some of the most fundamental principles upon which world order is today founded. If one can generalize on these questions—and it is always dangerous to do so—I think I would tend to agree that the basic principles upon which world order is founded today are State sovereignty coupled with freedom of the high seas. Other principles, of course, are enshrined in the Charter of the United Nations, but with respect to the law of the sea it is those two principles that find expression. What we are discussing, and have been discussing for several years now, is a way of achieving a reconciliation of competing interests and conflicting interests—one that would go neither too far in the direction of State sovereignty nor too far in the direction of unrestricted freedom of the high seas.

117. I do not wish to go into the substantive issues, but I should like to point out that the concepts of the common heritage of mankind and of the economic zone are precisely an attempt to work out new approaches that reflect neither the older concept of State sovereignty nor the older concept of freedom of the high seas without any restriction on either. In both cases we have radical new concepts. Had the sea-bed Committee achieved nothing else, its having given birth to those two concepts would have done it great credit.

118. I wish to say no more on that subject because I think it is generally agreed that the needs of the international community concerning the law of the sea have changed greatly, very greatly, certainly since the days of Grotius, but I would say even since the days of the 1958 and 1960 Conferences. Whereas at one time the law reflected essentially commercial interests, and perhaps military interests and other connected interests, at a later stage it began to reflect new interests—essentially, the interest of resources—and in recent times it has begun to reflect environmental interests. It is one of our problems to reconcile those competing interests.

119. The needs are new and so the solutions must be new. It is going to be difficult for some of us to work out ways of solving these problems, but the fact remains that our not yet being in agreement is not a reason for saying we are not prepared for the Conference.

120. As to the nature of the task we must fulfil, I think it is quite clear that we cannot simply tinker away with pre-existing conventions or principles. It also seems quite clear that we have had a very adequate ventilation of the issues and of possible approaches to these problems and now the time has come when we must decide whether we want to go on being a preparatory conference, which, in my personal view, could go on indefinitely, or whether we wish to take the results of our labours and try and work out conclusions and solutions. That, indeed, is the problem that

faces us now: whether we are prepared to make that kind of decision. In the view of my delegation, we are prepared to make that kind of decision. The general trend of the debate makes that clear. There are differences of views—we are aware of that—but even those who think we are not adequately prepared have none the less expressed a willingness to participate in a conference, although they themselves may regard it as being essentially of a preparatory nature. In the sense that the Chairman used the term, it is "preparatory" up to the final moment. Perhaps the Conference will be preparatory, but in the view of my delegation it will be something far more than that. It will be the actual negotiating forum where we must work out solutions.

121. Now, how do we go about it? What kind of procedures do we devise? We have heard some differences of views on this question also. I would summarize the views of my delegation briefly as being very close to those outlined by previous speakers, particularly the delegations of Kenya and Chile. We really must avoid the tyranny of the majority or the power of veto of the minority. In my delegation's view, there are ways of doing this, and they lie along the following lines: simple majority decisions in committee but a two-thirds requirement in plenary. On matters of procedure, although we should try for the kind of agreement we have always attempted in the sea-bed Committee, we are not persuaded there must be the same rigid rules of procedure, and where we find an impasse on procedure, given the experience of the sea-bed Committee, in which weeks have been lost in procedural difficulty, our preference would be to go relatively quickly to the vote.

122. With respect to the means of decision on matters of substance, we have a good deal of sympathy with the points of view of those delegations that have stressed the need for consensus. I think it is sufficiently well known that Canada considers that State practice is a legitimate means of developing international law, and that we do not need to argue the case from the point of view of a particular State or a particular group of States.

123. I noted that the representative of the Union of Soviet Socialist Republics pointed out that regional agreements alone do not create international law, but I find no discrepancy between his position and that of his colleague the representative of Poland, who has drawn to our attention the important implications of the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts *[A/C.1/1035]*. Quite obviously, both delegations would agree that regional agreements do have an impact on the law and should have an impact. Similarly, unilateral action, especially when acquiesced in by other States, and followed by other States, is precisely one means of developing the law and has always been one of the traditional methods. It is called State practice. But, leaving that aside, when we talk about multilateral solutions we must be very careful concerning the interpretation we place on the term "consensus". In the view of my delegation it is quite proper and appropriate, and, indeed, highly desirable, to work out the basis of a gentlemen's agreement on this matter and, to use a well-known Canadian expression, "Go to the vote if necessary, but do not necessarily go to the vote." We would hope that by this means voting would be a kind of last resort and that every effort would be made to accommodate the points of views of any minority, since we all know that, whatever means we may have chosen to develop the law, if we really wish there to be certainty in the law we must try and get the widest possible acceptance. The only danger we must avoid is, of course, undue insistence upon certainty in the law, which can turn into inflexibility of the law, and obviously what is needed, if we are to fulfil the mandate we are about to give to the Conference, is flexibility. To use one of the Committee's well-worn phrases, "pragmatism and flexibility".

124. Turning to the precise questions facing us, my delegation would have been prepared to consider the possibility of holding two conferences in 1974, but there seems to be a widespread trend towards a single conference, and that indeed is our own preference, given the heavy demand the Conference will place on us all. For that reason we would favour a single session next year of some 8 to 12 weeks' duration. We shall probably need 12 weeks, though most of us would much prefer 8 to 10 weeks. If we need 12 weeks, we should give some thought to the possibility of obtaining 12 weeks. But there seems to be a general agreement firming up around the figure of 10 weeks, and that is the point of view of my delegation.

125. I would think that, taking into account the views we have heard expressed so well by our colleague from Chile and bearing in mind that it will not now be possible to proceed to Santiago, we must give careful consideration to the availability of alternative sites, including, of course, Geneva and New York, and in my own delegation's view we would be well advised to consider also the possibility of going to Austria if we are invited by the Austrian Government, and perhaps it would be useful for all Member States to hear—if it is considered appropriate by the Austrian delegation—just what possibilities are open to us, what periods of time might be open to us during which we might make use of the excellent facilities which, as I can personally attest, are there in Vienna waiting for us.

126. With respect to our meeting later this session, my delegation shares the general view that we should try and compress it into a two-week period and not split it up, although we should not object to having a beginning period of a few meetings with a break to give us time for consultations, and then some more meetings with another break to give us time for consultations, provided the whole period did not extend beyond something like two weeks.

127. It may well be that we will not need to tax the facilities of the United Nations as much as appears to be the case because, judging by our experience in the past, we will certainly need time between meetings to try and negotiate agreements on some of the procedural issues facing us.

128. I should like to turn now from those questions, leaving aside for the moment the very important question of the invitation we might extend until we reach that point in our debate when we are discussing that particular issue, and simply say one or two words about the possible consequences of delaying our decision.

129. Taking into account the views we have expressed on the state of our preparation, my delegation would far prefer

to take the risk of a conference which was not successful during its first attempt, bearing in mind in any event that we have always foreseen the likelihood of, and the need for, a second session, than the risks which might be attendant on putting off the whole thing for another year or more. To our mind it is unthinkable to do so.

130. We are fearful of the scramble which could occur, and which is coming closer to us every day, in the area of the sea-bed which is still beyond national jurisdiction but may not be if we do not attempt to settle that question as quickly as possible.

131. We are worried about further disputes concerning fisheries resources, even raising delicate questions of boundaries in some cases, and we fear more than that the general uncertainty of the law which characterizes the period in which we are now living. We have had enough, in my view and in the view of my delegation, of discussion of these questions. The time has come to start settling them.

132. Finally, as to the kind of directions in which we should move, it is the view of my delegation, which we have made known on a number of occasions before now and which I will merely summarize, that the time has come to try to achieve a balance of those concepts reflected in what we might call the traditional law of competing rights with the concept of corresponding duties which, in the view of my delegation, must be reflected in the new law. Clearly, what we are embarked upon is much more of a progressive development than a codification.

133. For all those reasons, my delegation strongly supports the holding of a substantive session as soon as possible. And if I may make one concluding comment, I would hope that we can get to the drafting of the resolution as quickly as possible, through the consultative machinery if that is the best way of doing it, but one way or the other, because at the end of the day today we shall presumably be very close to the last minute if we wish to have a settlement of this problem by Monday.

134. Mr. SMIRNOV (Byelorussian Soviet Socialist Republic) *(interpretation from Russian)*: In preparing itself for the discussion of this agenda item the Byelorussian delegation, no doubt like many other delegations, not only has reread the sea-bed Committee's report but has also followed with great interest the course of the discussion of this item here in the First Committee. We have the impression that the desire to take a speedy new decision with regard to further work in the field of the law of the sea is in contradiction with the need for a thorough and objective appraisal of the results of the three years of work of the sea-bed Committee, and an identification of the reasons for the Committee's failure to perform its fundamental task–that is, to prepare for the forthcoming Conference draft documents on questions to be considered there.

135. We are far from belittling the significance of the diligent and hard work undertaken throughout that period by the Committee; but when it comes to the substance of the issue, the nature and orientation of our further work and its procedure, it would seem to us impossible, if not downright dangerous, to fail to undertake at least a brief analysis of the final results of this work. And, as we know, those results have been very meagre.

136. Reference is often made to the progress achieved in Sub-Committee I, which prepared draft articles on the régime governing the sea-bed and on the international machinery. But we should not forget that those articles are not agreed. In Sub-Committee II, where the number of vital issues was considerably larger, and where the level of interest of States in settling these problems was also considerably higher, even that was not done. On such contemporary problems of the law of the sea as the outer limits of territorial waters, fishing beyond the limits of territorial waters, the path of vessels through straits used for international navigation, the outer limits of the continental shelf, archipelagoes, the participation of land-locked countries in the exploitation of the resources of the sea-bed and the superjacent waters, freedom of access to the sea, freedom of transit through this group of countries–on these problems all we had was the setting forth of the positions of States, but not a single agreed decision was achieved. A similar situation arose in Sub-Committee III.

137. In paragraph 20 of the report to the twenty-eighth session of the General Assembly of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction it is stated that for the Conference on the Law of the Sea it is necessary to prepare: "... draft treaty articles embodying the international régime–including an international machinery–for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked, ...". Well, there is no such draft treaty. Furthermore, in the same paragraph we find a reference to the need to prepare draft articles on "subjects and issues relating to the law of the sea". Now, that too has not been done.

138. Accordingly, the Committee as a whole has not yet been able to prepare those fundamental questions upon which depends the success of the Third United Nations Conference on the Law of the Sea.

139. In its resolution 3029 A (XXVII) of 18 December 1972, the General Assembly further decided: to review at its twenty-eighth session the progress of the preparatory work of the Committee and, if necessary, to take measures to facilitate completion of the substantive work for the Conference. And that is precisely what is needed.

140. In this regard, the Byelorussian delegation supports the view of various delegations that it would not be appropriate to hold the Conference this year, and that what we should do is the kind of preparatory work that would guarantee the success of the third Conference. Our delegation considers that it is only after agreeing on draft articles, or, at the very least, attaining agreement in principle on fundamental problems, that there can be any question of convening a conference for the discussion of substantive questions. That preparation for the Conference can be carried out, for example, at a preliminary conference in 1974, with the participation of all interested States. As a basis for the working procedure in that conference and the

structure of its organs, we could take the principles of the work of the sea-bed Committee and, primarily, the principle of adopting decisions by consensus. In this regard we do, of course, understand that any given single delegation could not deliberately hamper the preparations for the holding of the conference. We consider that questions of the law of the sea which seriously affect at the present time the interests of all States should be resolved in a spirit of mutual understanding and compromise. It is only by this means that the international legal rules which will have been worked out will win universal acknowledgement and will be observed and that the conventions that are produced will be ratified by a majority of these States of the world.

141. The fact that the sea-bed Committee has not fully performed its task is not the fault of consensus, hinted by some; nor is it the absence of any desire on the part of the overwhelming majority of delegations to achieve agreement. Rather it is the complexity of the problems which have to be resolved in preparing for the Conference.

142. What I have said determines our attitude to operative paragraphs 1, 2, 4 and 5 of the unofficial draft resolution on this matter, which determines the dates for the holding of the Conference.

143. We should also like to comment separately on operative paragraphs 7 and 8 of this draft, which provide for inviting States to participate in the Conference on the basis of the so-called Vienna formula in a somewhat changed form. The history of the United Nations and international life has already demonstrated the ill-founded nature of this formula and that it is discriminatory in substance, and we should not add further paragraphs and sentences to it. I think we should simply throw it on the scrap heap as something which has served as an obstacle for so many years to the adoption of progressive decisions in the United Nations. The Third United Nations Conference on the Law of the Sea should be universal in character, and all States who so wish should have the right to take part in it.

144. Furthermore, the draft resolution completely fails to reflect the interests of States which are land-locked. As we have noted earlier, no question which affects the interests of land-locked countries or countries that are located in geographically unfavourable zones with regard to the sea produced a single agreed decision from the sea-bed Committee. Furthermore, even when those rules of law which have already been enshrined in existing international conventions came up for confirmation in new articles they were revised in such a way as to be detrimental to this group of countries. We have in mind article 19 of the text submitted by Sub-Committee I:

> "Land-locked States [and other geographically disadvantaged States . . .] shall have [the right of] [free] access to and from the Area . . . [in order to enable them to derive benefits, in accordance with the provisions of this Convention, from the Area and its resources]" *[A/9021, vol. II, p. 68]*.

145. As we know, these provisions were already enshrined in the Geneva Convention of 1958 on the high seas.[4] Article 3, paragraph 1, of this Convention states:

> "In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea".

146. So it would appear that these provisions have already been agreed upon, and we should not place them within brackets. Nevertheless, the whole of this article, which reflects the interests of more than 30 countries, has been put in brackets except for the words "land-locked States". Now all members of the sea-bed Committee are well aware as to what these brackets mean. It means that if we do not adopt the principle of consensus of the Conference then hardly a single provision of the law of the sea which directly affects this category of countries will reflect their interests. And so what actually happens is that all we have left outside the brackets are two words: land-locked States, and all that now remains to be put within brackets is "land-locked States". We can even cast doubt on the very existence of these States.

147. In concluding we should like to state that the Byelorussian delegation is ready to co-operate with all members of the Committee in matters pertaining to the preparation of universally acceptable resolutions on the items of the forthcoming Third United Nations Conference on the Law of the Sea.

148. Mr. AMERASINGHE (Sri Lanka): As the representatives of Kenya and Chile have asked why the informal understanding which I suggested should not be read in conjunction with any rules of procedure regarding decision-making, I had stated that there should be no voting on procedural matters at the Conference unless it is unavoidable. My reasons for doing so are more psychological than due to indifference to established practice. I am fully aware that in regard to matters of procedure the normal custom is to proceed by voting. But in the case of the Conference I felt that we should bear in mind that if we could not obtain a consensus on matters of procedure, there was much less likelihood of our obtaining a consensus on matters of substance. Most important of all, I felt that by avoiding voting on procedural matters we could at the very outset create an atmosphere conducive to the attainment of consensus on matters of substance.

149. Finally I should like to say that we should bear in mind the overriding principle that the purpose of rules of procedure is to help, not hinder, the work of a body.

150. The CHAIRMAN: Before adjourning the meeting until tomorrow, may I just say on behalf of the Bureau that we are grateful to all those who have abided by our wishes in relation to congratulations, but also to those who in their goodness of heart have felt that this has placed an unbearable burden on them.

The meeting rose at 5.20 p.m.

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4 United Nations, *Treaty Series*, vol. 450, No. 6465, p. 83.