

*Evensee meeting, Nov. 14-18
Statement by Ambassador Galt*

Subjects to be Discussed in Connection with the Seabed
Regime

Among the subjects to be discussed in connection with the Seabed Regime there must be, undoubtedly, the question of the mode of exploitation of the mineral resources in the Area. From the events following the end of the last Session it is clear that the compromise, such as it stands now, is not acceptable to many countries both in the industrialized and in the developing part of the world. There are at least three aspects of the problem that have not yet been adequately discussed. One is financing; another is the transfer of technology, and the third one is the question of joint ventures. I should like to remind you that, in his explanatory note accompanying the Composite Text, President Amerasinghe suggested that the time has come for a thorough discussion of the joint venture alternative.

Mr. Chairman, let me repeat ~~here~~ what I said at the meeting you conducted here in Geneva last March: It has never been our intention, nor is it our intention now, to distract the discussion, to make the Conference lose time, or to interrupt a process of compromise formation on a formula that seemed to be evolving. If this formula were acceptable to the majority of States, we would fully support it. There is, however, at least a possibility that the inherent difficulties of the present compromise formula turn out to be unsurmountable.

Mr. Chairman, my delegation would be willing to respond to the President's suggestion by preparing a new working paper and perhaps, to start with, submit it to a group of interested countries for further study. Let me say in conclusion that the discussion of the other two aspects of the problem that I mentioned,

namely financint and technology transfer, would be infinitely easier in the context of a joint venture approach.

Evensen Meeting, Nov. 14-18

Notes for Minister Evensen's "summing up" of the discussion on identification of major outstanding problem areas, and the concluding discussion on procedural aspects, during private consultations in Geneva 14-18 November 1977.

1. The discussion on identification of major outstanding problem areas has had as its basis the seven problem areas which I listed at the outset, and which emerged from the previous round of discussion which we had on procedural aspects. These seven major problem areas are the following:
 1. Matters pertaining to the international seabed area.
 2. Land-locked and geographically disadvantaged states.
 3. Dispute settlement provisions relating to the exercise of the coastal state's resource jurisdiction and to boundaries issues.
 4. The definition of the continental margin and the related issue of revenue sharing.
 5. Delimitation as between adjacent and opposite states.
 6. The provisions dealing with the status of the economic zone.
 7. Preamble and final clauses.

The purpose of the discussion has been to arrive at a more precise understanding as to which aspects within each of these problem areas that should be considered as critical.

2. At the outset of the discussion several participants pointed to the difficulty of agreeing on a list of priorities as between the issues concerned. For obvious reasons priorities varied from delegation to delegation. It was recognized therefore that we should not attempt to establish a joint list of priorities.

However, at the same time, there was agreement that for practical reasons it would be necessary to select some of the seven problem areas mentioned, with a view to achieving the necessary concentration of effort at the intersessional meeting. With this in mind, we have gone through the seven problem areas item by item.

This subject by subject discussion was preceded by some general observations. One such general observation was that in addition to the seven problem areas listed, there were some others which would need consideration. As examples of this were mentioned

- a) The question of the relationship between the law of the sea convention and other conventions,
- b) Enclosed and semi-enclosed seas,
- c) The status of islands, and
- d) Scientific research.

There seemed to be general agreement however that for the purpose of organization of work it would be sensible to concentrate at the next session of the conference particularly on the seven subjects listed, of course without the exclusion of other problems.

Another general observation, made by one participant, was the need to take a closer look at the editorial structure applied in the ICNT. The sequence of the various parts was not a matter of indifference.

3. With regard to the first item on the list - matters pertaining to the international seabed area - there was complete agreement on the need to take this up already at the intersessional meeting. There were also important indications given as to the aspects of the problem on which the negotiations would have primarily to concentrate. With a view to identifying the particular difficulties raised by the ICNT for a number of delegations, the participants from these delegations listed in their statements those provisions of Part XI and of Annexes II and III which they felt to be unsatisfactory.

It became clear that the aspects of the ICNT on the international seabed area which would need further negotiation would be in particular the following:

1. The system of exploitation, including the question of joint ventures, and of transfer of technology (article 151 and Annex II paras 4 and 5) ~~see attached documents~~
2. The resource policy (article 150)
3. The review clause (article 153, para 6)
4. The powers and functions of the Assembly and the Council and the composition and procedures of these two organs (articles 157-160)
5. Dispute settlement aspects (article 191 and Annex V ^{article} paras 4 and 37)
6. Minerals other than nodules (article 150(g)(c))
7. Scientific research (articles 143 and 151(7))

8. Financial arrangements (Annex II, para 7)
9. Land-locked and geographically disadvantaged countries (article 159, para 2, Annex II para 5, 158,(2)(xii)).

With regard to financial arrangements a great number of participants made the point that negotiations on this issue had been lagging behind and that it would therefore be necessary to make a special effort. A proposal that a group of experts ^{made} ~~assisted~~ by the Secretariat, might be asked by the President to take this matter up, received a wide measure of support both from participants from developing countries and from participants from industrialized countries.

A number of participants emphasized the progress which was made at the last session of the conference, while at the same time fully recognizing the serious character of the aspects which are still outstanding. In this connection it was pointed out that probably more than 90 per cent of the provisions emanating from the negotiations in the negotiating group of the chairman of the First Committee had gone unchanged into the ICNT. Participants both from industrialized and from developing countries all expressed their confidence that all remaining issues could be successfully negotiated and their willingness to contribute to this end.

4. Opening the discussion on the questions concerning the position of land-locked and geographically disadvantaged states, the chairman of that interest group made a statement identifying those parts of the ICNT which are of concern to his group. He pointed out that the group had agreed on a definition of the term "geographically disadvantaged states" and would seek to have that definition included in Part I (Use of terms), and also wherever appropriate in the various substantive parts of the text.

The main interests of the group focused on Part V (The exclusive economic zone). Here a number of modifications of the present text would be indispensable if consensus was to be reached. Reference was made in this connection to articles 55, 56, 58, 69 and 70, with a special emphasis on articles 69 and 70 dealing with participation of land-locked and geographically disadvantaged states in the exploitation of the living resources in the economic zone.

With regard to the continental shelf the group felt

that the 5 per cent referred to in article 82 should not be the last word in determining the order of magnitude of revenue sharing relating to activities on the continental shelf beyond 200 miles. One member of the group had suggested 7 per cent, while others felt this to be too modest.

On the status of the economic zone the position of the group to the effect that the zone should retain² in its character of high seas, remained unchanged.

As to transit rights, this issue now seemed close to a solution, only one or two states remaining unsatisfied with the formulations arrived at. The group was concerned also with a number of the formulations concerning the international seabed area, and would seek improvements there.

Finally there were some pending issues of concern to the group in the areas of pollution and scientific research, final clauses (in particular with regard to the question of reservations) and matters such as semi-enclosed and enclosed seas.

In statements from other participants from the group of land-locked and geographically disadvantaged states the suggestion was made that of the many issues of concern to the group, the following should be regarded as the most crucial:

1. The definition of "geographically disadvantaged states".
2. The rights of LL and GDS with respect to the living resources in the economic zone, and
3. Their rights with regard to mineral resources on the continental shelf and in the international seabed area.

Participants from the group of coastal states responded by emphasizing that they could not agree that all the questions listed should be the subject of negotiation with the group of LL and GDS. In their view the only issue with the group of LL and GDS which should be considered as critical was the formulations concerning access to participate in the exploitation of the living resources of the economic zone.

5. With regard to the third major problem area - dispute settlement provisions relating to the exercise of the coastal state's resource jurisdiction and to boundaries issues - the discussion focused on articles 296 and 297. Participants from the group of coastal states emphasized that compulsory judicial settlement would not be acceptable with regard to disputes arising from the exercise by the

coastal state of its sovereign rights pertaining to the resources in the economic zone. Article 296 as presently drafted was not compatible with this position, or was at best ambiguous, and would therefore have to be amended.

It emerged furthermore that with regard to article 297, paragraph 1 a, certain changes would have to be made for the article to command general support.

Some participants felt that these questions concerning the settlement of disputes should be taken up already at the intersessional meeting if this could be done without major inconvenience to the discussion of the two major problems of the international seabed area and the LL and GDS. Others felt that it would not be realistic to expect that this would be possible, and that the dispute settlement questions should therefore be taken up only at the next session itself.

The question of the definition of the continental margin and the related issue of revenue sharing was not discussed in depth, but the statements made were sufficient to confirm the character of these matters as major outstanding problems for the conference.

The same was the case for the fifth and the sixth of the major problem areas - delimitation as between adjacent and opposite states and the status of the economic zone.

6. With regard to the preamble and final clauses the procedural suggestion was made that the first week of the session might be used for a debate on both these questions. On the basis of this debate a new draft could be elaborated, possibly for further discussion in the drafting committee. Some participants were sceptical however with regard to the desirability of involving the drafting committee. An alternative suggestion was made to the effect that ambassador Beesley should be asked, not in his capacity as chairman of the drafting committee, but as an official of the conference and a member of the presidential "team", to chair the general discussion on the issue and thereafter to elaborate a new draft. There was general agreement that it would be premature to take this matter up now, and that it would be for the President of the Conference to submit his recommendations on the procedure to be followed.

Among issues which would have to be dealt within the final clauses were mentioned entry into force, reservations,

denunciation, amendments and the relationship between the convention and other conventions, such as the 1958 Geneva conventions and the IMCO convention. One participant also referred to the need to include some general principles and referred particularly to principles for the interpretation of the treaty, incorporating concepts such as "good faith" and "abuse of rights".

Several participants stated that it would be difficult to discuss the nature of the final clauses as long as the substantive contents of the convention were still unclear. However, in this connection reference was made to the need to distinguish between the necessary preparatory work and the actual negotiations. A procedure along the lines suggested would not necessarily preempt the real negotiation which would come at a later stage.

A practical suggestion was made to the effect that the Secretariat might be asked to supplement the paper elaborated earlier on the main options for the conference in the matter of final clauses.

7. After having concluded this discussion on the identification of the major outstanding problem areas the group concluded its deliberations by returning to the procedural aspects. Towards the background of the examination that had been made of the substantive problems, the suggestion was made that it would be essential to make clear that the next session would be the last negotiating session of the conference. On this point there seemed to be general agreement, though it was pointed out that in fact negotiations would have to continue until consensus was reached, or alternatively until all attempts at consensus had been exhausted.

However, on the related issue of whether a revised version of the ICNT should appear already after the fourth week of the session, and on the need for formalization of the text, differing opinions were still held. The point was made by several representatives that not until the inter-sessional meeting had been concluded, would it be possible to assess properly what would be the best procedure on these points.

A number of participants felt that after the seventh session it would be necessary with a short additional session in 1978 for the purpose of adoption of the text, so that

everything would be ready for the planned signatory session in Caracas early in 1979. Some participants felt, however, that the seventh session should be the only session of the conference in 1978.

The attention of the participants was drawn to the fact that the draft resolution on the conference, presently under discussion in the UN, does not contain the necessary proviso for the possibility of an additional session in 1978. The general feeling was that this state of affairs should be remedied. Even participants who had declared their opposition to the idea of a second session, agreed that the option of such a session should not be blocked through the necessary funds not being allocated for this contingency. It was agreed that this matter, as well as the question of an amendment of the draft resolution with a view to ensuring that funds would be available for intersessional work by the drafting committee, should be taken up with the Secretariat and with the President as soon as possible.

November 16, a.m.

The Chairman presented a list of subjects that still needed discussion, both by the intersessional meeting and by the Seventh Session:

1. First Committee matters. Part XI, Annexes 2 and 3.
2. Problems of the Landlocked and Geographically disadvantaged States. Articles 69 and 70.
3. Dispute settlement relating to areas under coastal State jurisdiction and to boundaries between adjacent or opposite State. Part XV.
4. Limits of the continental margin and related issues of revenue sharing. Article 76.
5. Delimitation between adjacent and opposite States. Articles 15, 74, 83.
6. Provisions dealing with the status of the Economic Zone. Articles 55, 56, 58, 59, 86, 89.
7. Preamble and final clauses. Part XVI.

The points were taken up in order.

the most important comments on point 1:

Ambassador Arculus (UK) listed the following points for discussion:

Resource policy

- production limitation
- questions relating to the Authority's role in commodity agreements
- compensation to land-based producers.

System of exploitation

- assured access to States and companies
- financial arrangements
- transfer of technology
- the Enterprise

Institutional problems

- powers and functions of Assembly and Council
- and interrelationship between the two
- voting in the Council

Review

Dispute settlement.

Ambassador Richardson (USA) enumerated the following points:

1. Sharing of revenues and limits of burdens on contractors. Annex II, para.7.
2. Technology transfer. Art. 151 (1) as relating to Annex II. There is a need to clarify conditions applicable to joint ventures to avoid the appearance that they might be obligatory. Art. 151 (3) Annex II, para 5(i)
3. Clear right of access for States and State-sponsored companies. Article 151 (1),(2),(3).
4. Discretionary powers vested in the Authority must not create uncertainty so as to discourage investment. Art. 150.
5. Composition and voting of the Council which must reflect interests and be so balanced that no group can dominate. Articles 159, 160.
6. Protection against abuse of discretion. Judicial review must provide such protection. Art. 191, Annex V, Art. 4, 37.
7. Resource policy. Production controls must not be more restrictive than necessary to protect land-based producers. Art. 151.
8. It is unnecessary to give the Authority power to regulate other minerals. That para. of Art. 150 should be eliminated.
9. Scientific research: Art. 143 could be construed to restrict high-sea freedom of research.

Ambassador Richardson stressed the cumulative effect of all these articles, which, he said, was worse than the effects each individual article might have.

Ambassador Zegerow suggested that the problem of financial arrangements be assigned to the Secretariat, which could do some preparatory work with the help of experts from developed and developing countries. This might be arranged in conjunction with the Amerasinghe consultations.

Ambassador Kolosovsky made quite a comprehensive statement. First, he said, he wanted to give an idea of the Soviet attitude toward Part XI and to the CT as a whole. "We could accept it as a basis for future negotiations at the intersessional meeting and at the Seventh Session." Part XI has some positive points.

It is the result of the work by the working group directed by you (Evensen). Some of the compromise formula is reflected in Part XI. Among these positive elements are the general principles and resource policy of the Authority. We have no difficulty with Art. 150 of the Text. It reflects the aspirations of many developing countries, but we believe a compromise must be found between the position of all countries, and it could be found. Particularly the limitation of production, which is controversial, could be negotiated in a working group.

The main negative point in Part XI is the departure from the compromise formula in the system of exploration.

Other negative points and shortcomings: paragraphs 5 and 7 of Article 151, concerning scientific exploration in the Area, which permit the Authority to interfere with these activities. When I spoke of the main negative points, I had in mind paragraphs 1 and 2 of this article. Para. 5 and 7 are in open contradiction with Part XIII of the CT.

I agree with the previous speakers that a number of dispositions and articles of Part XI need further examination. They have not been examined in detail in previous sessions. Some of them may be should be discussed at the level of experts during the inter-sessional consultations. In summing up I would suggest that the following problems be discussed.

1. System of exploitation -- problems of access to the Area (Art. 151)
2. Review Conference.
3. Financial arrangements
4. Settlement of disputes
5. Annexes II and III.

November 16, P.M.

Ambassador Kopal (CZ) said he too considered the CT as a step forward, that it offered a basis for further fruitful consideration. He suggested that the principle articulated in Article 150 (1)(f) should be better reflected in Annexes II and III, to enable the greatest possible number of countries to participate actively in seabed mining.

He pointed out that the problem of the landlocked

countries was not restricted to access to living resources. The LL had a special interest also in Part XI. The Text reflects recognition of this fact only partially. At any rate, there had been some progress with regard to representation in the Council. The special interests of the Group, however, must also be taken into account in the composition of other organs of the Authority in which not all States are represented, especially the Governing Board of the Enterprise. A special article should be inserted, following Article 148, embodying the principle of the recognition of the special interests of the group. The LL&GDS also had a special interest in the article on revenue sharing as well as in the Review Article.

Ambassador Wolf (Austria) Statement on the alternative joint-venture approach.

Discussion of the problems of the LL&GDS

Ambassador Wolf Some preliminary remarks are necessary. A mere enumeration of articles that have to be discussed would not give a complete picture of the problems.

The group of LL&GDS consists of 53 States, and there are many more that have the same problems and interests, but, for one reason or another, have decided not to join the group. A head-count would identify 80 States among the members of the Conference.

The term "landlocked States" does not need any definition. The term "geographically Disadvantaged States" is difficult to define. We have found a satisfactory definition, and this should be included in the Part "Use of Terms" or "Definition of Terms." Without going into the merits of the definition, it is a fact that geographic inequities, as other inequities in life, cause some countries to expect very much from this Convention, some less, many can expect only very little, and some nothing at all, as the text now stands and if we do not improve it.

This is not satisfactory. The great endeavor of this Conference is not only a concern of some coastal States, it is a global concern, and it is in this sense that the LL & GDS have participated from the very first day with all the energy and sincerity that each one could bring to this great task. And this is still so. None of us has ever tired of additional efforts. We feel entrusted with a task that goes far beyond our narrow national interests. The Common Heritage principle must incorporate also our aspirations and interests, if it has to have any meaning. Of course we also have

our own interests, we are not only philosophers, but are also motivated by down-to-earth reasons.

One difficulty that we are facing in our Group is that we are so different in our interests. Our membership ranges from ~~WXXX~~ Bjelo Russia to Swaziland, from Laos to Sweden: we are a good cross section of the U.N. It has been said that we are the most impossible group that ever existed, and I feel quite proud that it has been possible to fortify this group to act together, and I am pleased by this meeting, because the problems of our group are given the serious consideration they deserve.

This has not always been so. We were considered as trouble makers, sometimes we were laughed at. Some Delegations hoped we would fade away. But we have not faded away. Whereas individually we could not have obtained anything, we have acted together, we have acted like an international trade union. By organizing international we have been able to safeguard our national interests.

Of course it is difficult to say what we really want. Different members of the group have different needs and priorities. Some of them are deeply concerned about the articles on fishing; others have transit needs; some are interested in the development of the seabed, others in marine scientific research or in pollution. I must stress, however, that the list I am going to present you now is in no way exhaustive. I will merely list some of the concrete items:

1. There should be a definition of "Geographically Disadvantaged States", either in Part I, use of terms, or or in any other section of definitions; it is not so important to us, where.
2. Our main interest, of course, is in Part V, the Economic Zone. While the Economic Zone is already a fact of life and we know that we'll have to live with it, some modifications seem indispensable, if there is to be a real consensus on the text and if the Convention is to be ratified by a significant number of States. In Part V we are interested in a reconsideration of Articles 55, 56, 58, 69, and 70. Here some additional remarks are called for: Participation in the exploitation of living resources in the economic zone is a vital problem for some of us: for those of us who have had fishing fleets traditionally, for those of us who are landlocked and developing countries or GDS and developing countries, having no resources in their own EZ. This has proved to be the most difficult point during these years, and it will be difficult to

solve in the future. However, we feel it can be done, with the introduction of some new elements, well defined positions, and some give and take on both sides. The groups's interest in fishing is limited: there are not many countries for whom fishing is vitally important. However, I am speaking particularly of developing countries: there are 14 African land-locked countries and they soon will be 15. There are two more in Latin America, and four in Asia, with great problems in this respect. And we are thinking not only of the thorny problems of the present, we are also trying to think a little bit ahead into the future, when all countries will have their full independence and will have to participate in the development of marine resources.

3. Continental shelf. Our original idea was that the limit of the continental shelf should coincide with the limit of the EZ, at 200 miles from the baselines from which the territorial sea is measured. But we have seen how things have developed, and we cannot be too orthodox. So we have tended to accept the new situation, and our interests have turned towards revenue sharing beyond the 200 mile limit. We feel that the 5% mentioned in the Text now should be at least 7 %, or even more.
4. High Seas - Part VII. Our group has always taken the position that the high-seas character of the Economic Zone should be maintained as far as possible, and this remains our position. We can foresee great international complications if the Economic Zone tends to become a Territorial Sea, and this appears to be inevitable, unless there are certain safeguards.
5. Transit: Here a general understanding has developed -- with the exception of one or two States. But, on the whole, this problem has been solved, and I only hope there will be no reversal at the next session.
6. Part XI: The Representative of Czechoslovakia has very clearly stated our position on the issues of Part XI, and I am grateful to him for this. It is of great concern to us that the vast majority of countries, who do not have the technologies needed can nevertheless participate in the exploitation of the common heritage of mankind. Their interests must be protected in the Convention.

7. Pollution: There are some points of particular interest to our group in the articles dealing with pollution, but I would like to leave it to Ambassador Yankov to comment on these.

7. Obviously we have a profound interest in dispute settlement, which is of the greatest importance. Many points of the Convention could be invalidated or perverted if the dispute settlement system were inadequate. Also the question of reservations of course is of great importance in this context.

We have many more problems: for instance, Enclosed and semi-enclosed seas -- considering that we have Greece and Turkey among our members, with the very complicated problems they have to solve -- but I have been concentrating on the main points. We feel it is not asking for too much if we insist that our group should get its fair share of the Common Heritage of Mankind, but we are prepared to cooperate in any way to advance compromises and solutions advantageous to all countries. This is in fact inevitable, considering the enormous importance of the Convention, not only for the orderly management of the oceans and their resources, but as an indispensable part of a New International Economic Order and an essential instrument to achieve prosperity and peace.

November 17, a.m.

Ambassador Yankov (Bulgaria) suggested that the real key issues in Wolf's list, with which, however, he agreed as a whole, were the following:

1. Definition of GDS
2. Rights of GDS&LL with regard to living resources in the EZ. Access. Part V.
3. Rights of the GDS &LL with regard to mineral resources: (a) on the continental margin; (b) participation in the International Seabed Authority.

Of course there are other issues; but the issues of pollution are global; and with regard to marine sciences and transfer of technology, there were already a number of articles in the text; these, of course, could still be improved. But they no longer constituted key issues.

Castaneda reported on a meeting of coastal States present, that had taken place this morning. He expressed some disappointment about the way issues he thought had been solved satisfactorily had instead been reopened, and some pessimism about the possibilities of further negotiations unless they were to take place within the group of 21, on the basis of the results of the Sixth Session. He recognized only one key issue, and that is access to living resources in the EZ.

Beesley suggested two technical problems that had to be taken up under the heading of "access to the living resources in the EZ," viz., the question of access to the surplus, and what happens when there is no surplus; and, second, what is a region, and what happens if a country belongs to two regions, or if a LL or GDS forms part of a regional organization with a common fisheries zone.

Wolf referred to ^{2ⁿ} analysis of U.S. Geographer (1972) which, he suggested, should be distributed to all delegations.

Kolosovsky: "I support Ambassador Wolf and Ambassador Yankov. We agree with their points, and we are satisfied that in this meeting there is a clear will to settle the problems of the GDS & LL. The time for this has come. The main problem of course is access to the living resources, or I should say, to all resources of the sea. Access for all States is one of the fundamental issues: it must apply also to this group of States. Procedurally, the question of the

living resources should be taken up first, but if there is time, mineral resources should be dealt with, and perhaps some other issues.

Kopal stressed that the problem must be seen as a whole: access to resources of the sea and seabed, both living and nonliving.

Third issue area: Dispute Settlement with regard to coastal States' sovereign rights over resources and with regard to boundaries.

Zegers stressed that articles 296 and 297 raised critical issues, that the "castaneda package" was unacceptable because it practically invalidated the sovereign rights of the coastal State.

Richardson : The articles of the Castaneda package belonging to Parts II and III have been fully discussed by Committees II and III during the Sixth Session. The articles regarding dispute settlement, on the other hand, had not been discussed at all on any occasion; they needed a full discussion.

Rattray agreed that the subject was of critical importance but urged the meeting to be realistic. It would be impossible for an intersessional meeting of two weeks to take up more than Part XI, the GED & LL, and the procedure for the Seventh Session. It would be impossible for more than two working groups to work simultaneously: States, especially developing countries could not send large delegations to an intersessional meeting.

P.M.

Fourth issue area: The Continental Shelf

Knoke reminded the meeting that the Secretariat was preparing a study on this issue which would be ready in time for the Seventh Session. Discussion of the issue should, also for this reason, be postponed to the Seventh Session.

Fifth issue area: Delimitation between adjacent or opposite States

Knoke suggested that this would, at any rate, have to be left largely to bilateral negotiations.

Sixth issue area: status of the EZ, Definition of High Seas.

Schreiber's profound objections on this point were noted.

Castaneda expressed the satisfaction of his Government with the CT on these points. Coastal States had made significant concessions on this point to reach the compromise formula now incorporated in the CT, but the Text, as it stands now, is acceptable to Mexico.

Seventh's issue area: Preamble and Final Clauses

Zegers: There are at least three subjects of critical importance to be dealt with under this heading:
Reservations
entry into force, provisional entry into force
harmonization with other conventions and instruments.

There should be, during the early stages of the Seventh Session, a full debate on this subjects, preferably chaired by the Chairman of the Drafting Committee. So some drafting can get under way in good time.

Yankov: Ambassador Beesley should be invited in a personal capacity to chair these discussions: as a conference officer, not as Chairman of the Drafting Committee, since the Drafting Committee has no competence in this matter.

Schreiber noted that the Preamble was very poor. Reference should be made to a number of developments in the economic, technological, political areas. Articles on denunciation, revision, and amendments must be included in the Final Clauses.

Knoke: If President Amerasinghe chose to chair these discussions himself, that should also be acceptable.

Jagota: The subject of reservations is enormously complex. In one week's discussion not more than a general framework can be prepared.

Darwin, Kolosovsky. Preamble should be kept very brief and noncontroversial.

Some participants thought, a discussion on these matters was still premature; others (Richardson) thought it was useful to discuss them now, and to negotiate them at a later stage.

The discussion on the list of topics was concluded. The final hour was taken up by a discussion on Conference procedure.

Zegers stressed that the Seventh Session must be the last negotiating session. In that case, procedure had to be geared to that end. It was essential that a revised text should be tabled at the end of the fourth week.

Jagota pointed out it would be more realistic to discuss these procedures after, or at the end of, the intersessional meeting.

There was a lengthy discussion about the desirability of holding a second session of three weeks in August 1978. Most speakers were sceptical about the usefulness of such a session. Most agreed, however, that it might

be useful to leave the option open. This, however, would require action by the Fifth Committee, the consultative committee on budget, and a G.A. Resolution prior to December 10, 1977. Various formulas were suggested, to amend the Resolution that had been prepared. An amendment would be needed at any rate to make financial provision for the Drafting Committee to meet and initiate its work following the Seventh Session. Chairman Evensen was asked to take the matter up immediately with President Amerasinghe and with Under-Secretary General Zuleta.

18 November 1977

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Mr. Elliot Richardson
Mr. Richard Darman
Mr. George Aldrich

USSR

Mr. Igor Kolosovsky
Mr. Victor Yarmouluk
Mr. Igor Yakovlev
Mr. Boris Khabirov

YUGOSLAVIA

Mr. Zvonko Perisić

11/10

To: All States participants in the Third United Nations
Conference on the Law of the Sea.

With the production of the Informal Composite Negotiating Text at the end of the sixth session of the Third United Nations Conference on the Law of the Sea, the Conference has reached its final and decisive phase. Real progress in the negotiations would be facilitated if intersessional negotiations could be held at a suitable venue and time in advance of the seventh session. These intersessional negotiations should concentrate on those issues on which general agreement has yet to be reached and which form the essence of the package which the vast majority of participants consider indispensable to the attainment of agreement on a final treaty. Concentration on the elements of this package need not preclude discussion during the intersessional negotiations of other questions which continue to present an obstacle to final agreement on a treaty.

Given the importance of these intersessional negotiations I should like to hold preliminary consultations with the participants to discuss matters of procedure and organisation in relation to the intersessional negotiations. The principal items I wish to discuss are:-

- (1) the venue and dates of the intersessional negotiations;
- (2) the issues or groups of issues on which we should concentrate our attention.

It is my intention to organize these preliminary consultations as early as conference facilities could be provided by the U.N. in New York.

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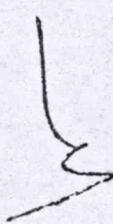


It is my hope that these consultations could take place during the last week of November or the first fortnight of December. I would consider two days or a total of four meetings to be necessary for the purpose but if Conference facilities are available for an extra day I would ask the Secretariat to provide for such a contingency. It is not my intention that matters of substance be discussed during these consultations but that we should seek merely to identify those matters of substance in the form of separate issues or groups of related issues which should receive special attention during the intersessional negotiations.

I should be most grateful if you would kindly make arrangements to have your country represented at these informal consultations. I would also welcome any observations of yours prior to the commencement of these informal consultations.

The dates fixed for the consultations will be communicated to you in due course.

H.S. Amerasinghe



November 15, A.M.

The discussion continued on two points: the organization of the intersessional work and the work of the next Session of the Conference. These two problems have to be considered together. The Chairman invited interventions on both points.

Statements were made by Mr. Wünsche (GDR) and Mr. Kopal (Czechoslovakia), Yankov (Bulgaria), Richardson (USA), Calero (Brazil) Beesley (Canada), Arias Schreiber (Peru), Brennan (Australia), Nandan (Fiji), Wolf (Austria), Knoke (GFR), Cissé (Senegal), Jeannel (France), Iguchi (Japan), Zegers (Chile), Jagota (India), and Arculus (UK).

Major new points that emerged were:

1. Clarification of the role the Committees and their Chairmen were to play at the Seventh Session (Yankov).

It was not to be expected that they should be in action all the time, but they should be at the disposal of the Conference any time as established machinery. Other groups, negotiating groups could be established besides, however, and it would be advisable that some of these should deal with issues cutting across the Committees. Thus the Group of 21 need not necessarily be restricted to Second Committee matters. The main point was that the Committees should not be dispensed with altogether, and that the whole situation should be handled flexibly and realistically.

2. Working method of intersessional meeting with regard to matters of substance: (Yankov) The intersessional meeting should express its views on critical issues as much as possible in Treaty language. But it would be out of place to think of final formulations. That is the task of the Seventh Session, and to attempt it at an intersessional meeting might provoke negative reactions. It would be psychologically counterproductive.

3. Status of First Committee work: (Brennan) The discussions are at a much earlier stage than those of the other Committees. We took on an enormous task when we grappled with that issue. We have to build a new regime, without precedent; we have to discuss the statute of what may become a kind of specialized agency of the U.N. system, plus the statute, functions, structure, powers, financing of its operational arm which is without precedent; we have to ensure that there is

adequate participation of national entities, many of which operate with private capital, having the alternative to invest or not to invest, and if they choose not to invest, exploitation of seabed minerals will be postponed for a long time. And all this has to be dealt with by a big Conference that has wisely decided not to vote. That, however, makes for a diffuse procedure. The text of Part XI must be brought up to the stage of the other parts. It is not mature for treatment at the Presidential level. It still must be treated in Committee, at the expert level. This is difficult, but it is the better course to follow.

4. The GDS&LL problem. (Wolf) The important thing is that we are 51 nations, or even more, including some who have the same problems and interests but have chosen to remain non-aligned. There is a growing awareness that the Convention must satisfy the interests of all participants, including this significant group of States. The safeguarding of our common interests is the *raison d'être* for our acting as a group: individually we would not have gotten anywhere. We are not a monolithic group: on the contrary we are most heterogeneous, comprizing East, West, North and South. Our only common denominator is that some of us have no coast at all, others have coasts so small that they can expect only a tiny fraction of the benefits reaped by other nations. This is a simple fact. There is reason for our group to feel comforted by this meeting, however. Often it takes years, or decades in history to obtain that certain interests are called by their name. It has taken some years to establish the concept of the LL & GDS as an established fact at this Conference. It is comforting to realize that this now has happened, and that the Conference recognizes that there are two big issues before us to be discussed by the intersessional meeting and by the Conference, viz., the organization of the exploitation of the seabed, and a solution of the problems of the LL & GDS. If nothing else came out of this meeting, this result would be worth while. On June 28 the Group of LL & GDS sent a letter to the President which enumerated the basic problems as we see them, and we feel negotiations should be based on this document.

5. Summary records of the conference. Two views were expressed: That there should be records, for history and for public opinion; and, on the other hand, that records would distort the work of the Conference, that delegates would feel encouraged to make political statements, and that it would set back negotiations. It was also felt that there would be a certain anomaly in making formal statements on an informal document

and that summary records should only be re-introduced after the CT had been formalized. Consensus seemed to form on a middle ground proposal (Yankov, Yagota) that there should be a record of Secretarial notes, without attributions, but recording the trend of the discussions. Such a record would be useful for the revision of the Text.

6. Dispute settlement. (Zegers) There is a need for a Fourth Committee. When the time comes for voting at the Committee level, the Plenary, dealing with dispute settlement, should formally be established as a fourth Committee?

November 15, P.M.

There being no further speakers on the two points under discussion, the Chairman proposed to give his summary. There would be no formal report to the President, the Chairman said: he would give the President an oral report, together with his written notes. These notes he was going to present to the meeting now.

The reading of the notes was very well received by the meeting.

Ambassador Arias Schreiber (Peru) proposed the addition of one item to the list of outstanding topics to be discussed, viz., the nature of the Economiz Zone and the rights and duties of States therein, and the definition of the High Seas. A full inventory of issues should be prepared by the intersessional meeting in February. The present meeting was too small to do the job.

Ambassador Yankov (Bulgaria) observed that the reference to voting was perhaps too strong; that the general view was that work should be continued on the basis of consensus, and that formal amendments should be postponed as long as possible.

Ambassador Beesley (Canada) suggested that the emphasis on "package deals" should be brought out more specifically.

There was some discussion on the delicate question whether, on some sensitive points, two positions should be presented to the President, or whether such points should be left out of the recommendations altogether (e.g., questions bearing on the relationship between the President and the Chairmen). More voices were heard in favor of presenting all positions on such questions.

discussion

There was a lengthy ~~position~~ on the question of formalizing the CT. Some participants (Zegers, Arias Schreiber) took the position that the CT should be formalized as quickly as possible, not later than the fifth week of the Seventh Session; that the Seventh Session must be properly programmed and that formalization comes into the picture in connection with this programming. If the text is not formalized during the next Session, we will need another three years to conclude the Convention. Formalization should not be confused with decision-taking (Beesley). Work on the formalized text could still proceed on a consensus basis, and formal amendments and voting postponed to the last minute. Others (Kolosovsky) suggested that if we want to maintain a working method aiming at package deals and consensus, the Text could only be formalized when there is assurance that it could be adopted by consensus.

The question was whether formalization should take place when there was assurance of consensus or ~~when-~~
~~xxxxxxxxxxx~~ when the Conference was satisfied that all attempts to reach consensus had been exhausted. Some ~~one~~ suggested not to formalize the formalization issue too much.

The meeting closed with the announcement of the President's decision to convene a intersessional meeting and to initiate consultations to this end with all delegations, before the end of this month.

SUMMARY OF DISCUSSIONS

November 14, a.m.

The CHAIRMAN opened the session by repeating the content of his invitation: the first question on the agenda is: Should we engage in intersessional work, and if so, how is it to be organized. The purpose of an intersessional meeting would be to reach as broad an agreement as possible. After the meeting certain recommendations should be transmitted to the President.

The second point would be: a general examination of the Composite Text, with the intention of identifying problem areas. Third: the organization of the work at the Seventh Session of the Conference should be discussed.

As to the order of items on this agenda, if approved, the Chairman suggested to begin with a general examination of the CT. After identifying major areas of problems that had yet to be resolved, it would be easier to design an appropriate procedure.

In discussing the CT, it would be best to start with Part XI, outstanding issues on the International Seabed Authority.

The Chairman also announced that he would be in New York next week for a discussion with Delegations who had been unable to attend the present meeting. The New York meeting would be a minor repeat performance of this meeting. This was planned in response to a request by several delegations, transmitted through the Acting Conference Secretary.

The Chairman also informed the meeting that he had been in contact with the President: that the President's advice had been not to attempt to negotiate issues in a restricted group, and that he agreed with the President on this. The task before the meeting was merely to identify issues, not to work out agreements.

Ambassador Nandan of Fiji requested a change in the order of items on the agenda: since he had to leave the following day he requested that the questions of procedure should be dealt with before, rather than after, the substantial questions which might take up quite some time. He felt it was important for him to be present during the discussion of procedure. Several delegations supported his request, and the Chairman decided to comply. He suggested, however,

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that meeting would do must be such that it is within the framework of the Conference: that it can be absorbed by the Conference. The initiative the President was taking with regard to the calling of an inter-sessional meeting was very timely: it was in fact overdue that the President should himself take some initiative, but that he would do well to call on Chairman ~~Ev~~ Evensen's experienced services. Second: it was of the greatest importance that the results of the meeting were properly channeled into the Conference. Comments on the CT must be heard, but it must be in the framework of the Conference. Third: The meeting should not be too long: two to three weeks should be the maximum.

Ambassador Brennan (Australia) ~~He~~ suggested that the meeting should focus on two substantial and one procedural question:

1. The Seabed regime
2. the LL & GDS
3. the management of the Seventh Session.

This is very important since it will affect the composition of the Delegations.

Dr. Jagota (India) pointed out that the next session would be crucial for the success or failure of the Conference. The question of the management of the next Session was of utmost importance.

The question of the date and duration of the inter-sessional meeting would have to be decided in the context of the agenda of other meetings such as that of the AALCC (Jan. 20-27, Qatar) and that of the "77" (March 13-24, Daccar). The intersessional meeting must interact with these regional interest group meetings. Considering the constraints of these various agendas, the intersessional meeting should be rather short, better two weeks than three; it should deal with only a few issues, and it should be attended by representatives of all groups.

Ambassador Castaneda (Mexico) agreed with the six issues enumerated by Zeger, but noted that not all of them are equally amenable to treatment by an inter-sessional meeting. He suggested that only three should be taken up by that meeting:

1. Seabed regime.
2. LL & GDS
3. Preamble and Final Clauses.

The other issues should be dealt with by the Conference itself, in a later stage, when the text is formalized and, if necessary, voting can take place. He suggested that the seabed matters be discussed by the intersessional meeting, the LL and GDS issue should be discussed by the Nandan Group; and the Preamble and Final Clauses should be taken up by Ambassador Beasley and the Drafting Committee.

Ambassador Wolf (Austria), referring to the recent discussions by the Group of LL and GSD in New York, said the work of the Group of 21 could be continued meaningfully only on the basis of the results of the Fifth Session. During the Sixth Session, unfortunately, matters had gone backward rather than forward, and the results of the Sixth Session were unacceptable to the group of LL and GDS as a basis of further discussion within the Group of 21.

Dr. Rattray (Jamaica) stressed that our starting point must be now, that is, the CT. We now have before us one single comprehensive document in which all issues are interlocked. It is not fruitful to single out and overstress the importance of individual issues. First and Second Committee matters now must be dealt with together and simultaneously. The question of the timing, duration of the intersessional meeting, its interrelationship with other meetings, and the role of the Chairman in all this was a matter of great importance. He also thought it would be useful if Governments were invited to submit written criticisms of the CT.

Ambassador (Kamil?) (Indonesia) reported that the President was going to consult all Delegations next week with regard to the date and duration of the intersessional meeting. He said we had to decide whether we want to go into light or into heavy issues; the meeting should be more than a "sparring session."

Dr. Ballah (Trinidad & Tobago) agreed that there had to be intersessional work if the work of the Conference was to be completed in two more sessions. But he shared some of the doubts expressed by Ambassador Calero. If we do not have adequate representation of all groups, the meeting will not be useful: The second question was how to translate the results of the meeting into the Conference mechanism itself. If the meeting were more balanced in its representation, this would be easier. He supported Dr. Rattray on the issue he had raised: We cannot give values or weights to issues important to some States. These issues may not be so important to a majority of other States. For many countries issues of Committee II may be more important than those of Committee I.

Questions of national jurisdiction, limitation, etc., the outer limits of the continental shelf, the issue of the LL & GDS -- these were questions important to many States. We do not recognize any priority or higher value to First Committee matters. But, he agreed, the starting point is the CT, and all issues are interdependent. On this, he said, we have been trapped by our own rhethorics. It might have been easier to solve certain issues without solving all, but now we are bound to one comprehensive Convention of interdependent parts. We can accept the Zegers/Castaneda agenda, he said, but Articles 58/59 are creating for us very serious bilateral problems. The licensing of foreign fishermen in the economic zone may be no problem for countries who have passed unilateral legislation; for us it is a very serious problem. The price of licenses may be prohibitive, and the exclusion of fishermen from areas in which they have traditionally fished may pose very serious problems: it may ruin the fisheries of some developing countries whose economic life depends on these fisheries. These are the real issues we have to deal with.

Chanel (France) had a few comments: (1). In view of the shortness of time for intersessional work -- certainly not more than three weeks -- it was essential to limit the number of points to be studied. He thought that Ambassador Brennan's suggestion was best. As for Ambassador Castaneda's suggestion to take up the Preamble and Final Clauses, he agreed that this was of great importance, and that some work could be done on the Preamble. A discussion on the Final Clauses, however, would be premature. How can we discuss e.g., the question of reservations, so long as the content of the Convention is unknown? As to procedure, he agreed that it would be useful if Ambassador Beasley could take up this matter but he thought that this was technically difficult to arrange, because it was not the task of the Drafting Committee to draft new proposals. Also, it would be very difficult to ask the Drafting Committee to go ahead without some previous exchange of views on a much more general level.

Ambassador Zegers (Chile) stressed that the question of the management of the next Session was most important.

Ambassador Arias Schreiber (Peru) agreed with Ambassador Calero: The problem of the organization of work at the next session was the most important point. Any discussion on substance at intersessional meetings without adequate representation was completely useless. If an intersessional meeting was to be held, it would be more useful to hold it later, and to hold it in

Geneva, making it possible for participants of the group of 77 to stop over on their way to Daccar.

The Chairman suggested that this question should be taken up again after lunch.

Dr. Jagota (India) pointed out that the President was calling a meeting early next months in New York to discuss these very same questions: venue, timing, and issues for the intersessional meeting.

Dr. Ballah (Trinidad & Tobago) suggested that, alternatively, it might be more fruitful to have the meeting early: perhaps early in January, in New York. In this case the results could be fed more efficiently into the regional interest group meetings.

Ambassador Brennan noted that, if it were in January, certainly it should not overlap with the meeting of the AALCC. It seemed to him, the dates mentioned by the President would do that. There must be better coordination.

November 14, P.M.

The Chairman invited participants to continue the discussion of the procedural aspects of the intersessional meeting: date, duration, venue, and topics.

Ambassador Beasly (Canada) agreed that an intersessional meeting was needed, and that First-Committee matters and the problems of the LL & GDS had to be discussed. He warned, however, not to create procedural difficulties. We can be very much criticized, he said. In the past the approach taken by the Evensen Group had proved to be very useful. but now questions arise about the Status of the President in these negotiations, and about the legal authority of this informal session. Do we harm the office of the Presidency? If the results of our work are received badly at Daccar, are we doing more harm than good? All things being equal, he would prefer to go ahead under the Chairmanship of Evensen, but it would be useful to know where Engo stands. I would hope, he said, that some discussion would be held with him so that he should not feel that we want to displace him. On the other hand, Ambassador Beasly said, he would not want the President to put his prestige on the line at these intersessional meetings.

The Chairman pointed out that both the President and the Chairman of the First Committee had been invited to the present meeting.

Ambassador Brennan (Australia) agreed with Ambassador Beasly: We are going to have desperate need of the

President. The precise moment at which to engage hi is difficult to gauge, however. If the President wants to take action with regard to the intersessional meeting, Australia would stand behind him. The President is sticking his neck out and I hope he is right in doing so, Mr. Brennan said. At any rate, we will support him.

Ambassador Richardson (USA) noted that much depends on what is expected of the next Session. If it is indeed to be the last negotiating Session, then the intersessional work would be very important. He agreed to Ambassador Brennan's list of subjects and thought it could not be enlarged. The key issue, he thought, was to get broad participation, broad representation at the meeting, and the date will impact on that. How can we insure that representation will be as broad as possible? Here the role of the President may be very important. He is in an advantageous position to ensure that there will be broad participation. His convening the meeting ensures that. As it also assures that the results of the meeting will be assimilated into the Conference. But there is a difference between the role of convener and the manner in which the meeting is conducted. The President would certainly want to follow a general recommendation to maintain his detachment from the work itself. Ambassador Richardson took note of the exchange between Ambassador Castaneda and Ambassador Wolf with regard to the issue of the LL and GDS: This would have to be worked out, he suggested.

Ambassador Zegers (Chile) pointed out that the issues of the Seventh Session and those of the intersessional meeting were closely interrelated. The ideas of the President with regard to the Seventh Session, he reported, were as follows: The President, with the 3 Committee Chairmen plus the Chairman of the Drafting Committee and the Rapporteur ~~xxxxxxx~~ next to him, would preside over informal plenary meetings to negotiate outstanding questions. This would last four to five weeks. Then the Text would be revised, and then formalized. There would have to be a few weeks for amendments and voting in the Committees, and then the Text would go to the Drafting Committee. All this procedure, Mr. Zegers suggested, must be decided by the intersessional meeting -- and that is perhaps the only thing which that meeting can do. On this question, however, the opinion of the President is of critical importance. On matters of substance, on the other hand, he should not wager his prestige too early. It appeared to Mr. Zegers, however, that the President had the intention of presiding over the whole meeting. Perhaps a compromise could be reached. Thus First-Committee matters could be discussed under the chairmanship of Minister Evensen.

a great deal of flexibility should be left with regard to these questions. Perhaps it would be useful to discuss first the procedure of the Seventh Session here, and only then the procedure for the intersessional meeting.

Ambassador Wolf (Austria) said the President wanted the Seventh Session under his authority. The most important matters would be Committee I matters, and they would be dealt with in plenary, under his authority. There would be no Committee meetings, but there would be negotiating groups. He was not sure how many such groups would be formed. It was his impression that they would be two or three or more. They would be composed in each case of the most interested countries, on the President's invitation. Then real drafting would start. There would be something like a second reading of the CT, and this would be the outcome of the Seventh Session. The Text would then be turned over to the Drafting Committee which would get it ready for the Eighth Session.

Ambassador Wolf said that to his Group this procedure was acceptable. He thought that more negotiating groups would be needed but he liked the idea of a new procedure because the old one, as everybody knows, was not efficient. Everybody would have to make some concessions. All this should better be worked out in advance, so that weeks should not be lost at the next session.

Ambassador Arcoulos (?) (UK) pointed out that he was a newcomer to this Conference but that he had clearly seen this morning that everybody wants a comprehensive Treaty, that this must be clinched at the next session, but that much work had to be done yet on Part XI and on other matters; therefore the intersessional period could not be wasted. An intersessional meeting, however, should be broadly based, and should not fall into any of the traps mentioned this morning. He agreed with Ambassador Nandan that the results must feed into the Conference. He agreed also that the time table must not be cluttered up and that the meeting must be short: not longer than 2 to 3 weeks. He agreed with Ballah that some issues were important to some Governments, and that they must be able to express their opinions on such issues. He agreed with Zeger that the issue of the continental shelf was very important. He was somewhat concerned about the suggestion of inviting written statements from all Governments at this time. This might produce an avalanche of old hash. Meetings of the type envisioned were more fruitful. As far as the President was concerned, the conflict was more apparent than real.

The President should take a strong hand in moving things along. In fact we will need a strong Presidency.

Ambassador Knoke (FRG) agreed with Zegers that we should focus on the procedure of the Seventh Session. He was much in favor of the President's plans as they had been outlined here. We have to find new methods because the old ones have failed us, given rise to texts produced by anonymous authors, etc. But he felt that intersessional work was needed. The question of Final Clauses, he thought, could not be left to the Drafting Committee. As for the timing of the intersessional meeting, it certainly would be wise to have it before the meeting of the "77," perhaps mid-February. This would give Governments time to consider the results while they still would be fresh for the meeting of the 77.

Ambassador Cisse (Senegal) pointed out that the meeting of the 77 had been set for March 13-24 in Marrakar, and that this date was firm.

Ambassador Arias Schreiber (Peru) suggested that the President should convene the meeting, to deal with Committee I matters, with the question of the LL & GDS, and with the Settlement of Disputes with regard to living resources. The President himself might chair the discussions on this last point, whereas the discussions on Committee I matters might be chaired by Evensen, and discussions on the LL & GDS by Ambassador Nandan. This method would combine all advantages. Full attendance would be assured, without, however, at this time, tying the President down to matters of Committee I. Then, he thought, the work should be turned over to committees, whatever their name, for negotiation. If new versions of articles could be produced by consensus, they could be incorporated in the Composite Text. The revision of the CT should not be made by one single person. The issues at stake were too important and required a collective effort. The revision should be undertaken in collaboration with the Committee Chairmen.

Ambassador Iguchi (Japan) said that his Delegation was very disappointed with Part XI. It did not reflect the general trend of negotiations. So his Delegation would welcome intersessional work, but that the meeting should not be too long and should be as broadly based as possible. He thought that formal written statements on the CT by Governments at this time would set the clock back.

Ambassador Chanel (France), returning to the question of the role of the President, suggested that his prestige should not be invoked too early. If the

next session was indeed the last negotiating session, that was the time for the President to put his prestige into the balance.

Ambassador Kamil (Indonesia) suggested that this meeting should refrain from nominating this or that person for the chairmanship of the intersessional meeting. That should be left to the President.

Ambassador Brennan (Australia) thought it would be unwise for the President to compromise his prestige on texts of intersessional discussions. He should assign tasks to negotiation groups. But when it comes to the Conference itself, then he should preside himself. During the intersessional meeting he might also preside over everything connected with Dispute Settlement. He agreed with Ambassador Kamil that this group should refrain from nominating chairmen. If the President calls an intersessional meeting, everybody should cooperate. He found it appropriate that the President should preside over discussions regarding the procedure of the Seventh Session and regarding Dispute Settlement, but that he would be wise if he assigned Chairmen for the discussions on other subject matters.

Ambassador Beasley (Canada) agreed that the President should not preside over the drafting of controversial texts, except in the case of Dispute Settlement. We must save him for the Conference. Certainly we must use his skill also during the intersessional work as much as possible, but without expending his prestige.

Ambassador Jagota (India) repeated that the starting point was the CT. Now the question arose: at what point could it be formalized at the next session? Certainly there would have to be some general discussion in Plenary on the Text. Then we would get a revised Text. This, then, could be formalized and turned over to the Committees for amendments, etc. The main purpose was to proceed by consensus as long as possible; for if it came to voting, how much of the Text would survive? He pointed out that perhaps we should have planned for two Sessions next years. This was at any rate the direction in which things appeared to be moving: Such as the President envisioned them there was in fact very little difference between the Seventh Session, chaired by the President, with the three Committee Chairmen next to him, and the intersessional meeting, organized the same way. He would, nevertheless go along with this procedure if the President decided to adopt it. At any rate, however, the intersessional meeting must be an integral part of the next Session.

Ambassador Kolossovsky (USSR) agreed that inter-sessional consultations would be useful only if they are representative. If the President sponsored them, they would be more representative. It should be up to the President to decide who should chair which discussions. The second question was: What shall be discussed? He agreed with previous speakers that the Composite Text should be the basis for further discussions. It was the result of long and difficult, sessional and intersessional work. Notwithstanding all its defects, we think it should be the basis for further discussions. It would be a disaster if, as a consequence of this meeting, a different text appeared. We must abstain from producing a competitive Text. We might formulate some articles if some new agreements could be reached: that would perhaps be the greatest contribution the intersessional meeting could make.

The crucial issues as he saw them, were three: First Committee matters, LL & GDS, and the management of the next Session. These three were of special importance for everybody. The First Committee was dealing with matters that were new in world history. No one ever had attempted to create an international institution to manage resources that belonged to no one and to everybody, that were the common heritage of mankind in which every country, regardless of social, economic or geographic position could participate. This was something absolutely new and obviously very difficult.

Also the role of the LL & GDS in this new context posed new problems: they need the sea, but there are many obstacles. These problems so far have not been sufficiently discussed either during the Sessions or intersessionally.

And, thirdly, everybody agrees that the management of the next Session is a crucial problem.

Other problems were also important, but they could be handled at the Conference itself. Finally, he fully agreed with Ambassador Jagota: If we want a Convention, the principle of consensus must be preserved to the last minute.

Ambassador Adjo (Nigeria) stressed that it would be premature to engage the President in intersessional work. This work must not pre-empt the results of the Seventh Session. This would create resentment. Some delegations, who would not have participated, would arrive at the Seventh Session with ill will. This would not be of any help either to the President or to the Conference.

Ambassador Rattray (Jamaica), taking up Jagota's point, stressed the similarity between the intersessional meeting and the Seventh Session. If these are in fact two formal sessions, the President cannot keep out. It would in fact be the first time that the President convened an informal session, inviting all delegations. The difference between that and the seventh session would be illusory. The success of the proceedings of the Seventh Session will depend on the proceedings of the informal session.

The President must be given full discretion in planning the intersessional meeting.

Ambassador Beasley (Canada) agreed that, in fact, we would just have another formal session. This may be ill advised, but that is the general desire, his Delegation would go along.

Ambassador Zegers (Chile) pointed out that there was nevertheless a great difference between the informal intersessional meeting and the Seventh Session. The informal session must start with the question: Which are the outstanding issues? That is not what is going to be done at the Seventh Session.

Everybody agrees that the President must sponsor and direct these consultations, but that he should delegate tasks, not engage himself in details.

Ambassador Richardson (USA) said that individuals at any rate are free to make suggestions. This meeting here could usefully focus attention on some of the issues that had been raised while leaving full discretion to the President. But certainly the President would welcome advice from a group as representative as this one.

It would be useful to look at some of the issues involved in seabed mining here and now. He could distinguish some highly technical issues that need early technical preparatory work, and some controversial political issues that could be discussed only by the Conference. One of the issues that certainly would have to be taken up was that of financial arrangements, as also mentioned in the President's explanatory note accompanying the CT. This note might be used as a guide in selecting issues for discussion. If some technical issues could be identified now, the Secretariat could be asked to assemble data ahead of time.

Ambassador Arias Schreiber (Peru) concurred with Zegers, that there is indeed a difference between an informal

consultation and the next Session. The informal session should identify issues and mechanisms to solve them. We need not specify who should chair the working or negotiating groups. As for the date, Ambassador Arias Schreiber thought, February would be most suitable.

Ambassador Yankov (Bulgaria) said there are three main problems to be solved by the intersessional meeting: (1) critical issues must be identified. In his explanatory note, the President proposed to do this himself; at any rate, it was most important to identify these issues and to find solutions by consensus. This will be of great help to the Seventh Session. (2) the second major issue was the organization of the work at the Session. (3) There might be preliminary talks on any one of the two major substantial issues, viz., the Seabed regime and the Economic Zone especially with regard to the rights of the landlocked States. If we were to deal with the whole range of problems involved, the agenda would be too big to be handled. These three major points, however, could be discussed under the chairmanship of the President. Ten days might be a sufficient time. The last days might be left to political discussions.

He agreed that the meeting should be representative. This, however, did not mean that all 150 States would have to be involved. It meant that all groups should be well represented, but not the total membership. It was not to be another plenary session. There might be working groups on the EZ and on the Seabed Authority.

The Committees might still turn out to be useful instruments. If a revised text is to be produced, the same people involved in the drafting of the CT should be involved again.

As to the idea of inviting written comments by Governments on the CT, he would not expect any positive results from this. It might, on the contrary, cause some real trouble. In conclusion he suggested that the intersessional meeting should be very modest in its aims.

Monday 14 November 1977

JOURNAL

THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

NOTE:

The President of the Third United Nations Conference on the Law of the Sea wishes to announce that he will convene an informal meeting of representatives of States participating in the Conference during the last week of November or the first fortnight of December to consider the programme for the intersessional informal consultations recommended by the Conference at the close of its sixth session. The date and time of the meeting will be announced in the Journal in due course.

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Thirty-second session
Agenda item 32

THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA:
DRAFT RESOLUTION

The General Assembly,

Recalling its resolutions 3067 (XXVIII) of 16 November 1973, 3334 (XXIX) of 17 December 1974, 3483 (XXX) of 12 December 1975 and 31/63 of 10 December 1976,

Noting the letter dated 30 September 1977 from the President of the Third United Nations Conference on the Law of the Sea to the President of the General Assembly ^{1/} regarding the decisions reached at the sixth session of the Conference, held in New York from 23 May to 15 July 1977,

Having considered the decision of the Conference, as conveyed in the letter of its President, that its seventh session should be convened in Geneva on 28 March 1978 for a period of seven weeks, with a possible extension to eight weeks should the Conference so decide,

Bearing in mind the request of the Conference, referred to in the letter from its President, that the Secretary-General should provide the necessary appropriate facilities for private consultations by members between sessions,

1. Approves the convening of the seventh session of the Third United Nations Conference on the Law of the Sea in Geneva for the period from 28 March to 12 May 1978 with a possible extension to 19 May should the Conference so decide;

2. Authorizes the Secretary-General to make available, as appropriate, the necessary facilities for informal intersessional consultations among delegations of States participating in the Conference.