Statement by Mr. J.A. Beesley for presentation in First Committee, XXVIII UNGA on October 18, 1973

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.

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 Chairman Amerasinghe and the other officers of the Sea-bed Committee, 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.

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.

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.

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.

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, a substantive session to be held next year.

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.

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

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.

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, concerning a recent conference, an extremely important one, of Heads of State, during which some 65 Member States of the United Nations affirmed certain principles 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 Yaoundé Seminar; we know of the Santo Domingo Declaration. 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.

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

Going 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 that a number of important issues still require solution. Nevertheless, this was true prior to the 1958 Conference, and 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.

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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.

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 too far neither in the direction of State sovereignty nor too far in the direction of unrestricted freedom of the high seas.

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.

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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 Grotuis, 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.

The needs are new, and 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.

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 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.

Now, how do we go about it? What kind of procedures do we devise? We have heard some differences of views on

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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.

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, that we do not need to argue the case from the point of view of a particular State or a particular group of States.

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 fisheries Agreement just reached in the Baltic. 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 terms "consensus". In the view of my delegation it is quite proper and appropriate, and, indeed, highly

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desirable, to work out the basis of a gentleman'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".

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 wide-spread 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.

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

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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.

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.

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.

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.

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.

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.

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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.

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.

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.