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134th meeting

Monday, 25 August 1980, at 10.40 a.m.

President: Mr. H. S. AMERASINGHE

Statements by the President of the Conference and the Chairmen of the First and Third Committees and the Drafting Committee

1. The PRESIDENT introduced his report on the work of the informal plenary Conference on general provisions (A/CONF.62/L.58) and the settlement of disputes (A/CONF.62/L.59), and his preliminary report on the work of the informal plenary Conference on final clauses (A/CONF.62/L.60). The first two reports required no comment.

2. Document A/CONF.62/L.60 should be read in conjunction with document FC/21/Rev.1, of which it was an amendment. He had described the former document as a preliminary report because he might have to add references concerning points on which he had omitted to comment as fully as necessary.

3. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, said that the nature and complexity of the outstanding issues in the First Committee had dictated methods of negotiation and consultation which had made frequent formal meetings undesirable; the Committee had thus held only one formal meeting during the present session. The working group of 21 had resumed its work with a broad review of the current situation and it had become clear that its work must also be conducted in an informal manner if the negotiations on hard-core issues were to be completed at the present session.

4. He had prescribed systems of consultations with and among interested delegations, interest groups or geographical groups. Those had included co-ordinators of regional groups and interested delegations who, in turn, had had the responsibility of consulting with their respective communities of interest. Thus, the consultations had not, in fact, been secret. He had made himself personally available to any delegation that had wished to consult him on any point.

5. The negotiators in the First Committee could on no account be accused of lacking determination or political will. He was glad to report that the Committee's only meeting had been held in perhaps the most satisfactory atmosphere ever experienced. The Committee had passed through many difficulties since its first meeting at the Caracas Conference and had achieved unity in its quest for understanding, accommodation and compromise. The central objective had been to create durable conditions of international peace and security in which all of mankind could expect to participate in the fullness of international life.

6. In order to obtain universal endorsement of the results of the Conference, the First Committee had chosen the path of consensus, that is, the process in which no interests vital to any nation could be silenced either because of sheer weakness in numbers or because of transient global power. In talking to rather than at one another, they had obeyed the rule that the individual needs and interests of each nation, weak or powerful, must take their place in the queue behind the collective priorities of the international community. The quest for consensus was based on the general belief that a viable universal treaty must be the result of consensus, must meet all the needs and interests within the contemporary international community and—perhaps more important—must create a new international régime for the common heritage of mankind: the deep sea-bed.

7. Consensus did not mean dictation by a small minority. It meant the addition of many small packages to form one large package of ideas which every member could accept albeit with some discomfort. Agreement on a package inevitably involved a process of give-and-take. At present, the political will and sense of urgency of the times had forced the pace of progress. The crucial package on the question of the Council had now been assembled, and without it the Conference would lose credibility and justify the views of those who thought that the Conference's mandate was too ambitious and that a technology-imprisoned generation was unable to develop a plan for survival.

8. It would not be helpful at the present stage to introduce any element of subjectivity into the Conference's review of a package. It would not be doing justice to the sacrifices of delegates and of communities of interest if one were to isolate individual aspects of the package. To reiterate old national positions at the present stage would constitute a dangerous anachronism.

9. Thanks to the dedication of all those involved in those difficult negotiations, the First Committee had made substantial progress towards the achievement of the common goal, namely, a universally acceptable convention on the law of the sea. The Committee had been able to draft a number of provisions to replace less acceptable ones in the second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) and the reactions of the regional groups appeared to show that the package reflected in those new provisions constituted an acceptable basis for compromise. He was, however, convinced that further improvements were still possible. Every effort to reach the best possible solution should be encouraged and he appealed to all delegations to stay united so that they could achieve even greater success.

10. Various changes resulting from the intensive consultations of the past few weeks had been explained in the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.28 and Add.1). He hoped that the components of the package deal on First Committee matters would be seen to include all the interests and concerns of the different groups and would constitute an integral part of the comprehensive revision of the negotiating text.

11. With regard to the sharing of benefits, article 140 had been a thorny problem for many years. On the one hand, some States felt strongly that the sharing of benefits derived from the Area should be limited to States parties to the convention, and that the benefits themselves should be limited to those of an economic or financial nature. On the other hand, the Group of 77 felt strongly that benefit-sharing should also be enjoyed by people who had not yet attained full independence but were in self-governing status, it being argued that they were an integral part of mankind and must benefit from the common heritage. It had now been agreed to retain the basic text of article 140 with some modifications; the exact scope of that article had been carefully delineated to make it clear that the equitable sharing should refer to the financial and other econornic benefits derived from activities in the Area and that the distribution of such benefits should take place, through an appropriate mechansim, on a non-discriminatory basis in accordance with article 160, paragraph 2 (*f*). The Council was empowered to make recommendations on the subject to the Assembly, but was required to reconsider them in the light of the Assembly's views if the latter rejected the recommendations.

12. The production policy group had been primarily concerned with article 151, but had also discussed the related article 150. Some consequential changes in other articles had also had to be considered.

13. One of the problems associated with article 151 had been that of allowing the tonnage allocation for sea-bed mining to be calculated with a guaranteed minimum growth rate when real growth in world nickel consumption was very low. While prospective sea-bed mining enterprises felt the need for such a clause to ensure continuity of the industry, the land-based producers feared that it might jeopardize their industry at a time of serious recession. The whole scheme had been discussed in depth

at the present session and the chairman of the production policy group felt that a better understanding of the proposal he had produced at the previous session had given rise to an acceptable compromise.

14. Another matter discussed had been the concern of land-based mining enterprises that they might have to face unfair competition in the market from subsidized sea-bed enterprises. Of even more concern had been the fact that importing industrialized countries which began sea-bed mining operations would also become metal producers and would close or restrict their markets to the land-based producers. The issue of access to markets was a critical one, particularly for young developing countries, while for other countries it was said to be a difficult matter closely connected with domestic trade policies. Several industrialized countries had pointed out that their geographical position and traditional trade policies made such a closed-shop situation most unlikely. The addition of subparagraph (*i*) to the text of article 150 would provide a good basis for a further review of the broad question raised by the developing land-based producers.

15. A further question of concern had been the extent to which the production control scheme would be effective in protecting the land-based producers. Most of the discussions on the matter had centered on the control of nickel production from the seabed. He understood that the reason for using nickel as the control metal was a technical one, and efforts had been made to explain exactly how the system operated. The problem of other metals, particularly cobalt and manganese, which had to some extent been overshadowed by the preoccupation with nickel, was a difficult one. Representatives from countries producing such metals had expressed their concern eloquently, and there had been some frank exchanges of views. A new text had emerged from the discussions and should go a long way towards helping in the matter. The possibilities for compensation and assistance to the countries concerned had been widened, and study of the situation by the Authority should help to identify the problems. Countries likely to be affected could call for preventive action before remedial action became necessary. Further useful work could no doubt be done on the question to ensure that a system of compensation, particularly for developing land-based producers, would not prejudice their industrial growth or development plans.

16. Efforts had been made to keep the statement of general policy in article 150 well-balanced and conducive to the interests of all groups, while at the same time its coverage had been broadened.

17. Most of the issues relating to the review conference, as set out in article 155, had been settled at previous sessions. Two difficult problems were involved in the outstanding issue relating to paragraph 5: how to deal with the consequences if the review conference failed to reach agreement. On the one hand, some developing countries maintained that there should be a moratorium in such a case, while the industrialized countries found that idea completely unacceptable. The second problem was the difficulty which some industrialized countries had in accepting that the amendments should be automatically binding upon all States parties on their entry into force. After intensive consultations, it appeared inadvisable to make any change in the text on the first issue. As to the second issue, a 12-month period had been introduced to replace the previous 30-day period in order to allow States parties more time to enact national laws.

18. The most important breakthrough was the agreement on a three-tier decision-making mechanism. Under that approach, all substantive questions before the Council would be divided into three categories, each requiring a different decision-making method: a two-thirds majority, a three-fourths majority and consensus, respectively. He had suggested that decisions not coming under those categories should be taken pursuant to the subparagraphs specified in the rules, regulations and procedures, set out in article 161, or, if not so specified, pursuant to subparagraphs determined by the Council, if possible in advance, by consensus. In the event of disagreement concerning the category into which a particular question fell, the question should be decided by the higher or highest majority unless otherwise decided by the Council by the same majority. It was clear that such an approach would meet the approval of Governments. It would require the goodwill and co-operation of all members of the Council. A weakness of the present approach was its inability to prevent abuse of the consensus procedure.

19. It had become clear during the consultations that the question of approval of contracts by the Council must form an integral part of the decision-making package deal. The compromise formula finally accepted contained the following important features: within 60 days of their submission by the Legal and Technical Commission, the Council would approve plans of work in accordance with article 6 of annex III. A plan of work recommended by the Commission for approval would be deemed to be approved by the Council unless any member submitted a written objection that the plan failed to comply with the requirements of the above-mentioned article 6. On receipt of such an objection, the conciliation procedure described in article 161, paragraph 7 (*e*), would apply. If the conciliation procedure failed to remove the objection, the plan of work would be deemed to have been approved by the Council unless it was rejected by consensus. A member of the Council who was an applicant or sponsored an applicant for a plan of work could not participate in the decision-making on the question. If the Commission recommended that a plan of work should not be approved or if it made no recommendation, the Council might decide to approve it by a three-fourths majority.

20. The modification of article 151 and annex III, article 7, to create a new two-stage contract appeared to have given the Group of 77 a basis for viewing the new text of article 162, paragraph 2 (*j*), more favourably. In the first stage, applications for plans of work were approved provided that they complied with the grounds in annex III. The Authority could afford to be liberal at that stage because it was not allocating a scarce resource among competitors. A contractor had no right at that point to produce from his mine-site, but could only do so after obtaining production authorization from the Authority. The application for such authorization was the second stage of the contract and was governed by article 151, paragraph 2, and annex III, article 7.

21. The parties to the negotiations had been unable to agree on whether all decisions of the Economic Planning Commission and the Legal and Technical Commission should be taken by the same majority. The Group of 77 had contended that they should be. The Soviet Union had been able to accept a simple majority for approval of plans of work but had insisted that all other questions should be decided by a two-thirds majority. It had finally been agreed that the first sentence of article 163 (10) should be replaced by the words "The decision-making procedures of the Commissions shall be established by the rules, regulations and procedures of the Authority".

22. Certain western delegations describing themselves as developed but medium-sized industrial countries had expressed concern lest, under the present constitution of the Council, they could not expect to obtain seats on it for some decades. They had therefore proposed that a minimum of two seats should be reserved for geographical categorization under category (*e*) of article 161, paragraph 1. That would involve enlarging the Council if none of the existing geographical regions would agree to give up a seat. The important issues raised would have to be examined at a round table at the next session.

23. He was now able to recommend a new text for annex III, article 5, on the transfer of technology, which should satisfy all the parties concerned. The amendments to paragraphs 3 (*a*), (*b*) and (*c*) were required to make it clear that the undertakings of the contractor referred to the technology he used in carrying out his activities under the contract. As a result of the deletion of the last sentence of subparagraph (*b*) and the rephrasing of the first sentence of subparagraph (*c*), the differences between the obligations in each subparagraph were more apparent: while subparagraph (*b*) provided the general assurance that the contractor would make available to the Enterprise the technology which he

used and was not legally entitled to transfer, subparagraph (*c*) referred to the more specific obligation of acquiring the legal right to transfer such technology to the Enterprise. Another improvement was the amendment to paragraph 7, which established a time-limit for including the undertakings involved in the transfer of technology in the contracts and for invoking them. Some delegations had advocated the deletion of any reference to a period of time while others had proposed that the period should be reduced. The formula might be a compromise acceptable to all. The report of the co-ordinators of the working group of 21 to the First Committee would form an integral part of the latter's report.

24. Although some developing countries had expressed a desire for a broader definition of technology to cover processing technology for minerals extracted from the Area, article 5, paragraph 8, had been left unchanged since such a definition would have encountered serious objections from some developed countries.

25. A common understanding had been reached on the hitherto controversial expression "fair and reasonable commercial terms", and a definition was given in document A/CONF.62/C.1/L.28. The question of sponsorship, as provided for in annex III, article 4, paragraph 2, had caused some concern to industrialized countries, and a provision had now been added to the effect that action relating to sponsorship would be determined by rules, regulations and procedures to be established.

26. With regard to the anti-monopoly clause, the French delegation had submitted an informal paper proposing amendments to annex III, article 6, paragraphs 3 and 4, and article 7, paragraph 4. Those amendments were designed first, to extend the application of the anti-monopoly provisions to reserved sites; secondly, to make it clear that when an applicant was sponsored by more than one State party, the plan of work was attributed to all sponsoring States parties; and thirdly, to give priority to States parties that had submitted or sponsored two or more approved plans of work. Delegations had expressed divergent views on that proposal. Amendments to annex III, article 6, paragraph 5, and article 7, paragraph 5, introduced by the chairman of the production policy group might provide a partial solution to the problem. Changes had also been made to improve the drafting or clarify the meaning of various articles.

27. Mr. Koh had made a compromise proposal on the financial terms of contracts, which various delegations and groups of delegations had indicated their willingness to accept as a compromise.

28. The Statute of the Enterprise (annex IV) had been refined and several changes had been made to clarify difficulties faced by some States. An important addition to article 6 empowered the governing board to prepare and submit applications for production authorization to the Council. That provision was required in the light of the proposed changes to article 151, paragraph 2, and annex III, article 7.

29. The new text of article 11, paragraph 3 (*a*), in annex IV, suggested that the preparatory commission should fix not only the amount of funds to be provided to the Enterprise but also the criteria and factors by which the amount might be adjusted, and that the recommendation of the preparatory commission should be embodied in the form of the draft rules, regulations and procedures of the Authority. That had avoided prejudging the question of the status of the rules, regulations and procedures drawn up by the preparatory commission, and had filled the gap in the second revision of the negotiating text.

30. The scale of assessments for providing funds for the Enterprise under article 11 had been replaced by the scale of assessment for the United Nations regular budget, adjusted to take account of States not members of the United Nations. After adjustment, the percentage of each State party's contribution to the Enterprise would be slightly less than its percentage under the United Nations scale of assessment for the regular budget.

31. In view of objections by both the Group of 77 and the industrialized countries to the proposals in the negotiating text for dealing with the question of a shortfall of funds to the Enterprise, it was now proposed that, if the sum of the financial contributions of States parties ratifying or acceding to the convention was less than the funds to be provided to the Enterprise, the Assembly should, at its first meeting, examine the extent of the shortfall and take into account the obligation of States parties under article 11, paragraph 3 (*a*) and (*b*), and the recommendations of the preparatory commission, and adopt measures for dealing with the shortfall, deciding the question by consensus.

32. Further refinements had also been introduced regarding the timing and form of payments by States parties to the Enterprise and provisions had been added concerning the repayment schedule, which had been a matter of concern to the industrialized countries. Improved provisions had been introduced concerning the term of "debt guarantees".

33. In response to a request by the President of the Conference, he had held preliminary consultations with the working group of 21, following which he had informed the President that the group desired the matter of the constitution of the first Council referred to in draft article 302, paragraph 3, submitted by the Chairman of the group of legal experts on final clauses to remain under review in the First Committee and to be taken up at the earliest opportunity. The working group meanwhile considered that article 302 should remain unchanged pending further discussions concerning article 161.

34. He had expressed appreciation to the President for the steps he had taken to ensure appropriate co-ordination in the treatment of issues of concern to two or more bodies of the Conference. Among other issues of that nature was the establishment of a preparatory commission, relevant aspects of which should be referred to the First Committee at an appropriate time.

35. He strongly recommended that the new texts emanating from the First Committee should be included in the third revision of the negotiating text. Every effort should be made to ensure the proper treatment of important issues in such areas as production policies. It was essential to bring opposing sides together at the earliest opportunity in order to discuss the feasibility of proposals that had been made. The solution of the outstanding issues would enhance the viability of the treaty provisions.

36. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, said that the Conference had set aside the initial weeks of the present session to enable the various constituent bodies to complete negotiations on the outstanding issues. That procedure, however, had not applied to the Third Committee because, as pointed out in his two most recent reports (A/CONF.62/L.34[1] and 50[2]), the substantive negotiations on Parts XII, XIII and XIV had been completed. The results of those negotiations were reflected in the first and second revisions of the negotiating text. The Third Committee had thus attained a level of agreement which offered substantially improved prospects for consensus.

37. That being so, he had considered it appropriate that the Third Committee should concentrate on an examination of drafting suggestions from the Drafting Committee and individual delegations. He had therefore written to the Chairman of the Drafting Committee suggesting that close co-ordination and co-operation on drafting matters should be maintained between the two Committees; he had pointed out that, in scrutinizing the various suggestions, he might establish that some of them were of a *prima facie* editorial nature whereas others might have a bearing on substance.

38. His letter and his subsequent statement at a meeting of the Drafting Committee had been motivated by a desire further to enhance co-operation between the two Committees. He had also had in mind rule 53 of the rules of procedure, which stated that the Drafting Committee should "without reopening substantive discussion on any matter, formulate drafts and give advice on

[1] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI (United Nations publication, Sales No. E.80.V.6).
[2] *Ibid.*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

drafting as requested by the Conference or by a Main Committee, co-ordinate and refine the drafting of all texts referred to it, without altering their substance, and report to the Conference or to the Main Committee as appropriate. It shall have no power of or responsibility for initiating texts."

39. He had also envisaged the possibility of consultation with the President of the Conference on provisions relating to the settlement of disputes and some of the final clauses, and with the Chairmen of the First and Second Committees on matters of mutual concern. It had been his understanding that issues relating to more than one committee which could not be solved through consultations with the President or the Chairmen of the respective committees could be brought to the attention of the Collegium in an attempt to find a balanced and acceptable solution.

40. It was his intention that any changes he would suggest should serve to improve the clarity of the text and make the provisions within the Third Committee's mandate more coherent in relation to the rest of the text. At the same time, he was determined not to upset the delicate balance achieved as a result of lengthy negotiations.

41. Following an examination of the suggested drafting amendments, he had prepared a list of suggested changes (A/CONF.62/C.3/64/Add.1 and 2). Those suggested changes had been considered by the Third Committee at two formal and four informal meetings, and many of them had been accepted, including some as amended during the discussion. Some of the accepted changes were of a drafting character but others had a bearing on substance. It was his intention to reflect those changes by proposing to the Collegium their incorporation in the third revision of the negotiating text. He would also inform the Chairman of the Drafting Committee of changes approved by the Third Committee. At the same time, he expected the Drafting Committee to inform the Third Committee of any advice or recommendation it made.

42. In the Third Committee's discussions, some delegations had suggested that further drafting improvements should be made in a few draft articles, particularly article 263. It had also been pointed out that any drafting changes to provisions within the terms of reference of the Third Committee which might affect substance should be considered and agreed upon by the Third Committee itself.

43. At the 46th meeting of the Committee, he had referred to a letter which he had received from the Secretary-General of the World Meteorological Organization (A/CONF.62/80)[3] expressing concern that some provisions in the negotiating text on marine scientific research might have a restricting effect upon certain operational and research activities of the Organization. He had informed the Committee that, in his reply to the Secretary-General of the Organization, he would state that in his view the provisions of the second revision of the negotiating text on marine scientific research would not hinder adequate meteorological coverage from ocean areas, including areas within the exclusive economic zone, since such operational and research activities had already been recognized as routine activities within the Organization's terms of reference and were of common interest to all countries.

44. In conclusion, he paid tribute to the spirit of understanding and co-operation shown by the delegations which had participated in the work of the Third Committee, to the tireless efforts of the language groups of the Drafting Committee and to the Secretariat for its valuable assistance.

45. Mr. BEESLEY (Canada), Chairman of the Drafting Committee, said that the Committee was not yet in a position to submit its final report because the language groups were still meeting and it hoped to be able to do further work during the current week. It would be premature for it to attempt to carry forward its work on harmonization and its preliminary work on textual review until the relevant documents from the First Committee and the plenary Conference appeared in more or less final form.

46. As far as the Second Committee was concerned, the situation was relatively clear-cut, since its Chairman had presented the Drafting Committee's recommendations and they had created no problem. The Third Committee had gone through a long list of drafting points and had reached conclusions that would no doubt be helpful to the Conference as a whole and to the Drafting Committee. He wished to allay any fears there might be concerning parallel drafting exercises. The Collegium had taken a decision on the subject on 30 July and the Chairman of the Third Committee had made a helpful statement to the Drafting Committee. The Collegium's decision was reflected to some extent in the letter addressed to him by the Chairman of the Third Committee on 1 August confirming that he would submit a report to that Committee and make appropriate recommendations to the Drafting Committee. It would be inadvisable for the Drafting Committee to anticipate its article-by-article work by examining proposals from any other committee. It was essential, however, that they should be examined to see whether they presented any harmonization problems, although they did not appear likely to do so. One language group had already processed the work of the Third Committee. It would be helpful, however, for the Drafting Committee to have proper documentation. For example, it required the report by the Chairman of the Third Committee as soon as possible. The Drafting Committee would confine itself to harmonization questions, leaving the textual review to a later stage. It would endeavour to complete its harmonization work at the current session, but that might prove difficult bearing in mind that it had had to give up a number of meetings. It would need to meet for some six to eight weeks, probably in January or February 1981, in order to conclude its work on harmonization and carry out its article-by-article review. Before it could submit its final report to the plenary Conference, it would require a text that had been not only finalized but formalized. He urged the Secretariat to settle any remaining translation problems before the next session, bearing in mind that all language versions were equally authentic.

General debate

47. Mr. SHANKAR (India) said that much had been achieved since the beginning of the Conference in 1973. Every effort had been made to reach decisions by consensus, which was necessarily a lengthy process. The second revision of the negotiating text, containing some 303 articles and eight annexes, included over 95 per cent of the agreed provisions. The outstanding questions which the ninth session had to resolve concerned the decision-making procedures in the Council of the proposed international sea-bed Authority, final clauses and a compromise solution in the clauses on maritime delimitation.

48. He was happy that the Conference had succeeded in resolving the critical issues. The compromise evolved during the past week had been endorsed by the major interest groups, including the Group of 77, and he was sure that agreement would be reached on the third revision of the text at the current session or the next session, when the Conference would be able to adopt the draft convention. At its next session, the Conference would also review other important questions relevant to the entry into force of the convention, including the role of the preparatory commission, the promotion of sea-bed mining consistent with the parallel system of exploitation, and participation in the convention and in the work of the Authority.

49. His delegation endorsed the compromise reached on voting procedure in the Council (art. 161, para. 7), on the approval of plans of work (art. 162, para. 2 (*j*)), and on the selection for production authorization from among applicants whose plans of work had been approved (art. 162, para. 2 (*z*), and annex III, arts. 6 and 7). Priority for the Enterprise in sea-bed mining had also been clearly recognized, as had the obligation on all States and contractors to transfer technology in order to enable the Enterprise to develop the reserved area concurrently with developments in the non-reserved area. The obligation would exist up to ten years after commencement of commercial production by the

[3] *Ibid.*, vol. XII (United Nations publication, Sales No. E.8.V.12).

Enterprise. The parallel system of exploitation would be reviewed after 15 years of effective operation. His delegation agreed with those aspects of the package and was satisfied with the compromise on final clauses.

50. The clauses on maritime delimitation constituted a particularly sensitive matter which must be worked out before the draft convention was approved by the Conference. The application of delimitation criteria must result in a fair and equitable solution, if such a solution was to be durable.

51. At the next session his delegation would express reservations on certain items, including the functions and powers of the preparatory commission, the status of the rules, regulations and procedures prepared by it, and the question of investment promotion pending the entry into force of the convention.

52. It was to be hoped that the spirit of co-operation and accommodation shown by all States would prevail. Efforts had been made to provide for the interests of industrialized, socialist and developing countries alike. In that spirit, the States which had adopted unilateral legislation on the exploration and exploitation of resources in international sea-bed areas beyond the limits of national jurisdiction should retrace their steps and work with the Conference to bring about a successful conclusion of its work. All States must re-endorse the principle that the international sea-bed area and its resources were the common heritage of mankind. That principle was *jus cogens*, from which no derogation was permissible.

53. Mr. TUBMAN (Liberia) said that the unilateral legislation enacted by certain countries in respect of the sea-bed and ocean floor beyond the limits of national jurisdiction might well have caused the failure of the negotiations of the Conference. Despite the strong stand taken by the Group of 77 and the African, Latin American and Asian countries, the danger of unilateral legislation to the future of the Conference had not faded. However, the fact that the session had made progress on many hard-core issues referred to in document A/CONF.62/C.1/L.28/Add.1) was proof of the good faith and determination of all parties to the negotiations.

54. It was encouraging to note that the consensus emerging on voting procedures in the Council, long recognized as a major hurdle for the Conference, was in line with the views of the Organization of African Unity, which had repeatedly rejected the incorporation in the convention of any system of voting based on the principle of veto, collective voting or weighted voting. If the power of veto was to be avoided, decisions to be taken by consensus, which gave each State a power of veto, must be curtailed to the absolute minimum. The categories of issues to be decided by consensus must be clearly stated in the convention. Article 161, paragraph 2 (*d*), should if possible avoid any cross-references which might make it possible to include other issues under the consensus heading. Under article 161, paragraph 7 (*e*), the President of the Council was empowered to institute a process of conciliation when consensus had not been achieved, and the conciliation commission was required to set out the obstacles to achievement of consensus in its report, thereby exposing any unjustifiable obstruction to the pressures of international opinion.

55. Encouraging progress had been made with regard to the compromise on the Enterprise, including the fact that, under annex IV, article 11, States would know the approximate amount which they would be obliged to pay to the Enterprise when their parliaments ratified the convention. That fact would thus speed up ratification. The question of how to deal with a shortfall in the funds made available to the Enterprise had not yet been solved, but any solution adopted should penalize neither States which had already ratified the convention nor States which were considering ratification. The existing text, as his delegation understood it, was unacceptable in that it did not provide for the inclusion of processing technology in the transfer of technology, and insufficiently forceful language was used to express the obligation of the contractor to transfer to the Enterprise technology belonging to a third party.

56. If the new order governing the oceans was not to become a new colonial system, the operation of the parallel system must be subject to constant review and the door kept open for change or replacement by another system. His delegation was disappointed that the idea of a moratorium in the event of an unsuccessful conclusion of the review conference was not provided for in the text. However, an acceptable solution could be found if all parties remained flexible.

57. In conclusion, his delegation was pleased with the outcome of the session and looked forward to the third revision of the informal composite negotiating text. It reserved its rights regarding any and all of the provisions of the third revision.

58. Mr. BALLAH (Trinidad and Tobago) said that in the course of the five years of preparation of the Conference and the seven years during which the Conference had been in session, rhetoric had flowed in profusion, but it was now slowly being translated into action. For his delegation, the principle of the common heritage of mankind had always been *jus cogens* in that it was a norm of general international law. His delegation therefore supported the original Chilean proposal in that regard and pointed out to those who sought to justify their unilateral exploitation of the deep-sea bed that analogy was not a source of international law. The traditional freedom of the high seas could not be extended by analogy to mean freedom for a few to exploit and appropriate the manganese nodules of the deep-sea bed. Those nodules belonged to all mankind.

59. The second revision of the negotiating text was the product of many years of negotiation and the Conference must now determine whether it represented a just and equitable balance of the conflicting and divergent interests of the international community.

60. His delegation had always been guided by the desire to reach a consensus, even though the process was both time-consuming and difficult to administer; however, agreements reached by consensus commanded universal respect and would be kept in good faith. The main drawback of a consensus approach was that the views of those other than the major protagonists in the negotiations tended to be overlooked.

61. It seemed that a solution to the institutional management structure for the Council was in sight. A three-tiered approach was envisaged: some matters would require a consensus, others a three-fourths majority and others a two-thirds majority. His delegation's preference had always been for a two-thirds majority for all questions of substance. A consensus approach to decision-making in the Council would permit any one member to hold up the operation of the system. His delegation's acceptance of a three-fourths majority for decisions in the Council would depend on the countries of Africa, Asia and Latin America obtaining at least 25 seats on the Council, where 27 votes would constitute the required majority. His delegation also suggested that questions relating to the future powers of the Council and the methods for deciding which of the three types of procedure for voting on substantive issues was to be used should be subject to a simple majority vote since such matters were essentially procedural.

62. Much of the rest of the text, including Parts XII and XIII, could now be endorsed by consensus. It was to be hoped that substantive changes would not be made to the text of those provisions for the sake of drafting elegance. His delegation could endorse the existing provisions on the territorial sea and contiguous zone, archipelagic States, straits used for international navigation, high seas, and the right of access of land-locked States to and from the sea and freedom of transit. It found acceptable the proposal made by Argentina, China and other States to add a new provision to article 21 which would enable the coastal State to introduce laws and regulations in respect of the navigation of warships, including the right to require prior authorization or notification for passage through the territorial sea. The question of delimitation of the exclusive economic zone or continental shelf between States with opposite or adjacent coasts remained unresolved. The convention must provide clear rules of law on delim-

itation so as to avoid interpretation based exclusively on subjective notions of equity.

63. Since, over the years, the organic unity of the issues involved and the need for a single comprehensive treaty had been stressed, the Conference could achieve consensus only if reservations were permitted to some articles, provided that the articles were not fundamental or that the reservations were not inconsistent with the basic purposes and objectives of the convention. The early entry into force of the convention would remove the justification for an international oligopoly of industrialized countries operating under an illegal umbrella of reciprocally-recognized national legislation. In view of the importance of the convention for mankind as a whole, his delegation felt that its entry into force should depend on a sufficiently large number of ratifications or accessions (possibly 60) to keep faith with the desire for a convention based on consensus, but low enough to ensure the operation of the convention as soon as possible. The Conference was nearer than it had ever been to achieving its purpose and it must press on.

64. Mr. MARKER (Pakistan) said that his delegation had no difficulty with many parts of the text and would be happy to join in the consensus on them. However, it had serious problems with some provisions and the fact that they had not been discussed during recent sessions of the Conference should not be taken to mean that his delegation had endorsed them. The legal régime of the exclusive economic zone as defined in Part V might be acceptable to his delegation provided that it was unambiguously stated that no research activity in the zone could be undertaken without the prior express consent of the coastal State.

65. His delegation continued to have strong reservations on articles 69 and 70 and did not recognize any other State's right to the resources in the exclusive economic zone, since that would be contrary to the sovereign rights of the coastal State and would have inequitable results in view of the varying geographical situation of coastal States in different parts of the world. In his delegation's view, the nature and extent of the access which land-locked States and States with special characteristics should have to the living resources of the exclusive economic zone should be determined and governed through appropriate bilateral, subregional or regional agreements between the States concerned. Similarly, his delegation could not accept article 125 as it stood, because it did not comply with the transit State's sovereignty over its territory. The provision giving the transit State the right to take all necessary measures to ensure that the land-locked State's rights in no way infringed its legitimate interests was not adequate.

66. His delegation was not satisfied with the régime established for the passage of warships through the territorial sea. An amendment to article 21 proposed at the previous session of the Conference (C.2/Informal meeting/58) had been supported by 37 States, but had been completely ignored in the second revision of the negotiating text. It was essential that the passage of warships through the territorial sea should be subject to prior authorization from the coastal State concerned. The provisions on the delimitation of the exclusive economic zone and the continental shelf of opposite or adjacent States also required amendment. Articles 74, paragraph 1, and 83, paragraph 1, of the first revision of the text had been changed by the Collegium without regard to the agreed procedure for introducing such changes. The sponsors of document NG7/10/Rev.2 and other like-minded countries had accordingly rejected the revised text. The negotiations during the current session had shown some promise and consultations were continuing. His delegation reserved the right to submit its views in writing on that issue at an appropriate time.

67. In his delegation's view, a uniform régime of consent should apply to all kinds of marine scientific research activities in the exclusive economic zone and the continental shelf without any exception. It therefore had serious difficulty in accepting the concept of "implied consent" referred to in article 252 of the second revision. The question of scientific research over the continental shelf had been adequately covered in article 246, paragraphs 1, 2, 3 and 5, thus making paragraphs 4, 6 and 7 and article 296, paragraph 2 (*b*) superfluous. His delegation preferred the text of article 253 in the first revision, on the suspension or cessation of research activities to the text in the second revision. Furthermore, it had difficulty with article 254 since it did not recognize any 'right' of neighbouring land-locked States over the exclusive economic zone and the continental shelf.

68. While not entirely satisfied with the results of negotiations reflected in document A/CONF.62/C.1/28/Add.1, his delegation considered them a step forward in the search for a consensus and would therefore not object to their incorporation in the third revision after appropriate modifications. Decisions on matters of substance in the Council under article 162, paragraph 2 (*e*) and (*k*), and article 161, paragraph 7 (*f*), should be taken by a two-thirds majority. The question of the category to be ascribed to an issue for the purpose of voting, referred to in article 161, paragraph 7 (*g*), was procedural and should be decided by a simple majority.

69. The phrase "without substantial cost to the contractor" in annex III, article 5, paragraph 3 (*c*), and the time-limit in paragraph 7 should be deleted. The definition of the term "technology" in paragraph 8 should be expanded to cover the processing, transport and marketing of nodules. The provisions for meeting a shortfall in the funds required by the Enterprise (annex IV, art. 11, paragraph 3 (*b*)) were not adequate. The issue should not be subjected to the requirement of a consensus. If peoples who had not attained full independence or self-governing status were to be assured an equitable share in the benefits derived from activities in the Area, article 140 should not be linked to article 160, paragraph 2 (*f*), or to article 162, paragraph 2 (*n*). While his delegation favoured the inclusion of a compulsory mechanism for the settlement of disputes, including those on the delimitation of marine boundaries, it could not subscribe to provisions which challenged a State's sovereignty over its territory or its exercise of sovereign rights in its exclusive economic zone.

70. Lastly, in order to ensure the early entry into force of the convention and its universal acceptance, States which might have difficulties on certain specific provisions must be permitted to become parties to the convention by entering reservations to such provisions. Article 303 as drafted in document FC/21/Rev.1 and Add.1 was not satisfactory to his delegation, although it realized that there were areas where no reservations could be permitted, such as Part XI of the convention. In conclusion, his delegation reiterated the opposition of the Group of 77 to any unilateral exploitation or exploration of the common heritage of mankind.

71. Mr. PERIŠIĆ (Yugoslavia) said that, as a result of the untiring efforts of all the participants in the negotiations, his delegation felt that the Collegium could now perepare the third revision of the negotiating text on the basis of the results of those negotiations and the conclusions to be drawn from the general debate.

72. In conformity with the non-aligned policy of his country, his delegation laid particular stress on the need to adopt a comprehensive, balanced and generally acceptable convention on the law of the sea. Since his delegation's basic position concerning that Convention had been made clear in a written statement at the opening of the session, he would now concentrate only on a few aspects of the second revision and the results achieved in the current negotiations.

73. His delegation felt that the second revision of the text had served as a good basis for the negotiations on the area of the common heritage of mankind and on the effective functioning of the international régime which was being established. On that point, his delegation's position did not differ from that taken by the Group of 77.

74. With regard to the decision-making processes in the Council, the suggestion contained in document A/CONF.62/C.1/L.28/Add.1 could be accepted by his delegation in conformity with the decision taken by the Group of 77. The proposed solution was an appropriate one and could attract a general consensus.

75. On the question of the transfer of technology, however, his

delegation found the proposed text still unsatisfactory. The definition of the transfer of technology to the Enterprise should include all stages of activity, and at least that of processing. Furthermore, the Authority should have the assurance that it could in time acquire the necessary technology on reasonable commercial terms.

76. It was particularly important to find a satisfactory solution for the problem of the financing of the Enterprise. In his view, the text in the second revision offered a far better solution than the one proposed in the new document. Since the Enterprise was an organ of the Authority, the shares of the States members should be paid to the Enterprise in order to enable it to start exploitation.

77. His delegation attached great importance to the provisions on the review conference. The solution proposed in article 155, paragraphs 4 and 5, was acceptable to his delegation.

78. Lastly, the common interest of opening the Area for the production of metals should be balanced against the protection of the interests of land-based producers and should not lead to adverse effects on the world market.

79. With regard to the questions dealt with by the Second Committee, he reaffirmed his delegation's support for the régime of the exclusive economic zone as a *sui generis* institution, with sovereign rights for the coastal State over living and non-living natural resources. In conformity with the resolution adopted at the Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in September 1973, his delegation considered that the establishment of the exclusive economic zone must not be a barrier to the freedoms of navigation and overflight. It was for that reason that his delegation had suggested an amendment to article 36 on straits (C.2/Informal Meeting 2/Rev.2). In consultation with a number of delegations which had been at first hesitant with regard to that amendment, it had succeeded in devising a compromise text which could be of assistance to the Collegium for the purpose of amending article 36. In the absence of such an amendment, the existing article 36 could lead to interpretations contrary to its intended purpose.

80. One of the results of the revision of the negotiating text had been the adoption of a definition of the continental shelf which gave the coastal State an opportunity to extend its sovereignty over the natural resources of the sea and its subsoil to the outer edge of the continental margin, thereby reducing the extent of the area. That detrimental effect should be compensated by means of a more substantial participation of States, through the Authority, in the benefits derived from the exploitation of the non-living resources of the continental shelf beyond the 200-mile limit. His delegation accordingly found the present text of article 82 unsatisfactory.

81. His delegation had endorsed the inclusion in the second revision of the provisions on the delimitation of the economic zone and of the continental shelf between States with opposite or adjacent coasts which had been suggested by the Chairman of negotiating group 7 and which provided a better basis for consensus than the first revised text. Useful negotiations had taken place at the present session on three issues concerning delimitation and had confirmed his delegation's view that the texts of articles 74, 83 and 298, paragraph 1 (*a*), should be maintained in the third revision.

82. In conclusion, his delegation looked forward to the adoption, at the earliest possible date, of a convention that would safeguard the interests and fulfill the expectations of mankind with regard to the most important issues relating to the progressive development of international law.

83. Mr. MAZILU (Romania) said that important progress had been made in the current negotiations, particularly on the preamble, matters within the competence of the First Committee, the general provisions and some of the final clauses. Those results, however, would have been more effective if all delegations had had an opportunity to participate fully in the process of negotiation. A number of important outstanding problems had not been the subject of negotiations, although many delegations had urged that they should be dealt with.

84. In his delegation's view, article 70 did not adequately safeguard the vital interests of geographically disadvantaged States situated in regions or subregions poor in biological resources. His delegation had therefore proposed that the article should be amended to read: "If the region or subregion where the geographically disadvantaged States are situated is poor in living resources, the rights of those States under paragraph 1 shall apply to the neighbouring regions or subregions" (C.2/Informal Meeting/51).

85. So long as that question remained unsettled, no consensus with regard to the provisions on fisheries was likely. Considering that a solution appeared to be forthcoming on the question of the continental shelf, he strongly urged that a suitable formula should also be found for the problem of fisheries.

86. On the question of delimitation, his delegation felt that the inclusion of paragraph 1 of articles 74 and 83 was not justified. The basic elements in the matter should be agreement between interested States and equitable principles which took into account all the circumstances of the case. Islets which were uninhabited and had no economic life should not have negative effects with regard to the maritime areas belonging to the States concerned. So long as no agreement on delimitation was reached, the parties concerned should not take any unilateral measures which might hamper the attainment of a final solution. Lastly, since negotiations on a compromise text were under way, his delegation reserved its right to express in writing its position on the results.

87. On the important question of innocent passage of foreign warships through the territorial sea, he stressed that, in accordance with existing international law, with the long practice of many States and with national legislation—including that of his own country—such passage was subject to the prior authorization of, or notification to, the coastal State concerned. It was of course understood that navigation through international straits was not thereby affected. His delegation was ready to participate in negotiations for the purpose of reflecting that requirement more adequately in the new revision.

88. As to the outer limit of the continental shelf, its extension beyond 200 miles was unreasonable since that would greatly affect the common heritage of mankind; the sharing of revenues provided for in the negotiating text would not offset the great losses which the international community as a whole would sustain.

89. With regard to the final clauses, his delegation considered that the provisions on reservations were at variance with the principle of national sovereignty. The right of States to make reservations to an international treaty was a question of principle and the recognition of that right in such an important and complex treaty as the convention on the law of the sea constituted an imperative necessity.

90. The new revision would have to be submitted to Governments for careful consideration. Only after their analysis would it be possible to decide on its status. The next session of the Conference, which was so important for the finalization of the convention, would offer the most appropriate conditions for the settlement of all pending questions of vital interest to States.

The meeting rose at 1.05 p.m.