Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.136

136th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session)*

interests and to safeguard the resources of the international sea-bed area, which were the common heritage of mankind.

155. Continuing as the representative of Uganda, he emphasized the great hope that countries which, like his own, were geographically disadvantaged placed in the work of the Second Committee. In keeping with the 1974 Kampala Declaration,[5] countries like Uganda continued to hold the view that, in areas beyond the 12-mile territorial sea, coastal States should have not complete sovereignty, but only limited jurisdiction over the living resources of the zone up to 200 miles from their shores. While coastal States would have the lion's share in the exploitation of such living resources, that exploitation must be shared by the land-locked and geographically disadvantaged States of the region, as recommended in the declaration of 1973 by the Organization of African Unity[6] on the issues of the law of the sea. It was to promote the sharing of the living resources of the area he had mentioned and of the seas beyond the 200-mile limit that his delegation had proposed the establishment of a common heritage fund, the acceptance of which would represent a giant step towards protecting the interests of the poorest nations of the world.

156. With regard to the question of transit rights, his delegation believed that, rather than the third-party privileges which were available to all, the ships of land-locked nations should enjoy most-favoured-nation status when visiting the ports of coastal States.

157. Uganda shared the concern that had been expressed about the trend towards the awarding to consortia of unlimited powers to undertake sea-bed mining without thought for the damage that would cause to the interests of land-based mineral producers like itself. It was, therefore, participating in the efforts of present or potential land-based producers to devise appropriate safeguards for incorporation in the final treaty. Discussions concerning a compromise on that issue could be held in the interval before the next session of the Conference.

The meeting rose at 7.45 p.m.

[5] *Ibid.*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/23.

[6] *Ibid.*, document A/CONF.62/33.

136th meeting

Tuesday, 26 August 1980, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE

General debate (*continued*)

1. Mr. SHARMA (Nepal) said that his delegation had noted with satisfaction the package deal concluded in the First Committee (see A/CONF.62/C.1/L.28 and Add. 1). It considered, however, that, in view of their insignificant benefits from the exploitation of the resources of the exclusive economic zone and the continental shelf, developing countries, and particularly the least developed and land-locked countries, should be exempted from payment of any contributions for the funding of the Enterprise. All delegations should be given some time in which to examine the implications of the package deal. It should be made clear whether or not article 140 favoured the least developed countries and what was meant by the term "non-discriminatory basis".

2. He reminded the Conference of the proposal for the establishment of a common heritage fund, originally introduced by Nepal. Its basic purpose was to ensure that a substantial portion of ocean mineral revenues was used to promote human welfare, principally by assisting developing nations, to promote world peace, to protect the marine environment, to foster the transfer of marine technology, to assist the relevant work of the United Nations and to help finance the Enterprise. Such a fund could provide as much as $5 billion annually for development and other international purposes. The proposal would be a major step towards the attainment of the new international economic order and could make an important contribution to improving the general world situation. It would also help the Conference to reach agreement on other outstanding issues and had gained considerable support since its introduction. It was not intended as an attack on the exclusive economic zone: coastal States had a duty to contribute to the international community a portion of the mineral wealth they received under the convention. The sharing with other countries of mineral revenues from the exclusive economic zone was morally appropriate, since ocean resources had been regarded under traditional international law as common property.

3. His delegation did not consider that the exclusive economic zone had already become international law. The Group of 77 had deplored and condemned unilateral action with respect to the deep-sea floor and, in his delegation's view, such action in the off-shore area was also objectionable. The President of the Conference had requested nations to refrain from any unilateral action while the Conference was in session, and had repeatedly stated that the negotiating text was not a negotiated text and that it had no legal standing. The common heritage fund proposal was in the national interest of every State represented at the Conference.

4. The special session of the General Assembly on development was meeting amid deep disappointment over the donor countries' contribution target of 1 per cent of their gross national product. An announcement that real progress was being made towards the establishment of a common heritage system would be the best news the Conference could give to the special session and would herald a new era in international politics. He therefore urged all delegations to support the proposal.

5. His delegation had consistently advocated that the economic zone should not extend beyond 200 miles and that the continental shelf should coincide with the economic zone. The tendency of some coastal States arbitrarily to extend the continental shelf beyond 200 miles was regrettable; it might diminish the scope and content of the common heritage of mankind, lead to serious conflict and endanger any hope of consensus in the Conference.

6. With regard to the settlement of disputes, the negotiating text should make it clear that some disputes were subject to compulsory jurisdiction while others were not and that some were subject to compulsory conciliation. It was inequitable that the Conciliation Commission should not be empowered to question the exercise by coastal States of their discretionary powers in determining the allowable fish catch and harvesting capacity or surplus.

7. In cancelling out the few rights accorded under customary international law, articles 69 and 70 were unsatisfactory and inequitable. The articles should be improved to accommodate the needs and interests of the land-locked and least developed countries.

8. It appeared that the concept of the economic zone was now to be extended to the high seas. Under the existing articles, the participation of the land-locked and geographically-disadvantaged countries was confined to the small portion of the fish stock known as the "surplus". Those countries should be granted more equitable participation.

9. His delegation urged the international community to show goodwill towards the land-locked States. The resources of the exclusive economic zone should be shared among mankind as a whole; any decision regarding their distribution should be taken by an international organization, and not unilaterally by coastal States. The "surplus" concept was a departure from existing international law.

10. In addition, improvements were required with regard to voting procedure and residual matters dealt with in the First Committee.

11. Mr. DORJI (Bhutan) said that the revisions in which the negotiations at the present session had resulted could serve as a generally acceptable package, but some provisions required further clarification to make them more widely acceptable. The phrase "on a non-discriminatory basis" in article 140, paragraph 2, might prevent the developing countries, particularly the least-developed among them, from receiving the special consideration they deserved. The linking of article 140 to article 160, paragraph 2 (*f*), and to article 162, paragraph 2 (*n*), also had serious implications for those States. Special consideration for the developing and least-developed States should not be subject to a consensus decision.

12. With regard to the composition of the Council, his delegation was concerned about the wording of article 161, paragraph 2 (*a*). The words "to a degree which is proportionate" could lead to representation of the land-locked and geographically-disadvantaged States in the Council incommensurate with their participation in the Assembly.

13. The proposed amendments could, on the whole, be used by the Collegium as a basis for a third revision of the negotiating text, taking into consideration the views expressed during the general debate. His delegation would like to see land-based producers both potential and actual, particularly in developing States, protected from the adverse effects of deep-sea mining.

14. As a land-locked and least-developed State, Bhutan could hardly feel that the negotiations had been concluded satisfactorily. While the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) formed a good basis for negotiations, its articles should not be considered as negotiated articles. With regard to articles 69 and 70, for example, his delegation had been among those which had stated at the eighth session that the Nandan text was a good basis for negotiation, but no negotiations on it had since taken place in the Second Committee. His delegation understood that the negotiations would centre on the right of the land-locked and geographically-disadvantaged countries to share the surplus of the living resources of the exclusive economic zone, which was determined by the coastal States. Taking articles 69 and 70 in conjunction with article 296, however, it could be seen that the rights of the land-locked and geographically-disadvantaged States were practically meaningless. Those rights should be given more positive form. One possibility of doing so without interfering with the rights of the coastal States would be for the latter to take account of the recommendations of interregional, regional or international organizations such as the Food and Agriculture Organization of the United Nations in determining the surplus of living resources in their economic zones.

15. The distribution of ocean wealth as proposed by the Conference was not consistent with the objectives of the new international economic order. His delegation wished to co-sponsor the proposal for a common heritage fund introduced in negotiating group 6. In doing so, it considered that contributions to the fund should primarily be the obligation of developed and industrialized coastal States, with other States in a position to do so making contributions on a voluntary basis.

16. The general acceptance of the concept of a clearly-defined continental shelf in exchange for acceptable revenue-sharing had not been reflected appropriately in the second revision. There was an ambiguity in article 76, paragraph 6, which might be used by some coastal States to extend their continental shelf, in some cases as far as 600 miles. Clarification had been sought on that provision in the past, but no satisfactory answer had been given by the States concerned. He referred, in particular, to the phrase "such as its plateaux, rises, caps, banks and spurs". Clarification was also required as to the precise definition of a natural component and its implications. The revenue-sharing formula in article 82 was also unsatisfactory to his delegation, which favoured the proposal in document NG6/6 of 10 April 1979 as being a more equitable element in the overall package relating to the continental shelf.

17. Provision should also be made in annex II, article 2, paragraph 1, for equitable representation by interested groups. The group of land-locked and geographically-disadvantaged States should be represented in the Commission on the limits of the continental shelf. His delegation failed to understand why, under paragraph 5 of the same article, those poorer developing countries should have to defray the expenses of any of their members serving on the Commission when the major benefits from the continental shelf would go to the coastal State. Such expenses should be borne by the international community, with major contributions from coastal States.

18. His delegation welcomed the fact that the predominant opinion of the Conference had been against any *ad hoc* reservations. Such reservations could nullify all the efforts made and make the package deal meaningless.

19. Consideration should be given to the need for the United Nations to assist developing countries in matters affecting the acceptance and implementation of the future convention, and his delegation welcomed the submission of the draft resolution on the matter.

20. The Conference should consider the inclusion of a special provision for concessions to the least-developed countries to defray any contributions they were obliged to make to the Authority. He urged the Conference to respond favourably to that request.

21. In all its doings the Conference must keep in mind the principle of the common heritage of mankind.

22. Mr. CALERO RODRIGUES (Brazil) said that the main purpose of the current debate was to provide guidance for a final substantive revision of the informal composite negotiating text. It was possible at the present stage to achieve only preliminary results on some questions. Decisions on the final clauses could not be taken until the final text of the convention was available, and some of the provisions concerning the settlement of disputes could likewise not yet be considered as final.

23. His delegation was convinced that the texts proposed for the general provisions, the settlement of disputes and the final clauses (A/CONF.62/L.58, 59 and 60) should be included in the third revision of the text, but he had serious doubts about the idea of including final clauses and general provisions under a single heading.

24. Of the extensive and detailed negotiations on outstanding issues conducted in the First Committee, those on the decision-making procedures of the Council were among the most significant. His delegation and others were not entirely happy with the wording of article 161, paragraph 7. However, there was now a genuine compromise proposal, which could be accepted despite its imperfections. While providing appropriate guarantees to safeguard all interests likely to be most affected by deep-sea mining, the proposal was also fully consistent with the principle of the sovereign equality of States, giving the same rights and responsibilities to all members of the Council.

25. His delegation welcomed the amendments to article 151, paragraph 2 (*b*) (iii), which made it clear that deep-sea mining could account for the totality of annual growth in world nickel consumption only when that growth was less than 1.8 per cent. With regard to paragraph 1 of the same article, the participation of the Authority in future commodity agreements would clearly relate to the production of the whole Area.

26. His delegation could also endorse the proposed changes in some of the provisions relating to the system of exploration and

exploitation. It was unfortunate that the Second Committee had been convened only briefly and very late in the second part of the session. It had been suggested that, if it had met more frequently, there would have been a risk of upsetting the careful balance achieved on some basic issues. However, the failure to hold meetings during the last stage of informal negotiations meant that the Committee had missed an invaluable opportunity of examining some sensitive issues still requiring consideration.

27. There were some imprecisions in, and omissions from, the text that could and should be corrected to preclude future misunderstandings. It would, for instance, be useful to stipulate more explicitly that the area beyond the 12-mile limit should not be used in a manner detrimental to the security of the coastal State.

28. Article 60, paragraph 1, should be simplified to make it clear that the exclusive rights of the coastal State covered all types of artificial islands, installations and structures. It should also be made clear that the existing provisions of article 58 could not be interpreted as permitting the execution of any military exercise by foreign vessels without notification to, and authorization by, the coastal State.

29. Another point which had received little attention was the apparent omission of any explicit reference to the enforcement rights of coastal States in areas under their jurisdiction in connexion with non-living resources. Article 73 referred to such rights only in respect of living resources; problems could not be disposed of simply by avoiding frank and open discussion at the informal stage. Discussion of the considerable number of important proposals still before the Second Committee might have eliminated the need for delegations to consider the possibility of exercising their right to present formal amendments at a later stage.

30. The Third Committee had met to consider a number of drafting changes proposed by its Chairman (see A/CONF.62/C.3/L.34 and Add 1 and 2). His delegation had welcomed the exercise as a useful means of dealing with some of the imperfections of Parts XII, XIII and XIV. Most of the imperfections were of a technical nature and could generally be corrected through drafting changes. The adjustments needed, however, often had a bearing on substance and therefore went beyond the field of competence of the Drafting Committee. His delegation regretted that it had not been possible for that Committee to tackle important issues in all instances. It welcomed the Chairman's statement that he was prepared to reconvene at an appropriate time.

31. Despite the various revisions of the informal composite negotiating text, the complexity of the problems involved called for further action. Article 263 was a typical example. In attempting to cover simultaneously the question of the liability of both coastal and researching States for measures taken in breach of the convention, paragraph 2 of that article was ambiguous.

32. In pointing out the usefulness of the changes suggested by the Third Committee and the need for a few further changes, his delegation welcomed the general concepts embodied in Parts XII, XIII and XIV. Recognition of the fact that a virtual monopoly of marine scientific research within a few States could not be perpetuated and the development of a full consent régime represented an accomplishment. He wished to repeat his delegation's understanding that article 246, paragraph 6, would not create a dual system for scientific research on the continental shelf, and that it confirmed the coastal State's sovereignty over the shelf, in the exercise of which the coastal State might waive some of its rights.

33. The exclusion of the exercise of discretion by the coastal State from all binding procedures of dispute settlement was an additional confirmation of the wider concept of the sovereign rights of States over the exclusive economic zone and the continental shelf.

34. The task of the Drafting Committee and its language groups in improving the text and harmonising the different language versions was not easy, particularly in view of the thin dividing-line between drafting changes and substantive changes. His delegation had therefore welcomed the drafting exercise in the Third Committee, and considered it essential that the Drafting Committee's suggested changes should be carefully considered by the Conference in plenary meetings, the main committees and the informal conference meetings before being incorporated into the final text. That should be one of the preliminary tasks of the Conference when it reconvened.

35. Mr. CHAN YOURAN (Democratic Kampuchea), referring to the right to make reservations, said that his delegation hoped that the convention would be adopted by consensus. States parties to the convention should not, however, be denied their sovereign right under contemporary international law to enter reservations. As at present worded, the new article 303 in document FC/21/Rev.1/Add.1 did not appear to meet that legitimate concern, which his delegation and many others insisted should be recognized in the convention.

36. His delegation welcomed the fact that, in its general provisions, the convention clearly reaffirmed that, in the exercise of their rights and the fulfilment of their obligations, States parties should refrain from any threat or use of force against the territorial integrity or political independence of any State or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations.

37. As concerned the question of delimitation of the exclusive economic zone and the continental shelf, his delegation considered that, in the final analysis, it would be wise to keep to the provisions of articles 74 and 83 of the first revision of the text, which clearly defined the delimitation criteria on the basis of equitable principles. While awaiting agreement on final delimitation, the parties concerned should refrain from any activities that might prejudice such delimitation or the reciprocal interests of the parties.

38. Referring to the settlement of disputes, he said that, while attaching particular attention to recourse to the conciliation procedure referred to in documents SD/3 and Add.1, his delegation nevertheless maintained that, whatever settlement procedure was chosen by the parties, they should not be under the obligation to submit a dispute concerning delimitation of maritime areas to a settlement procedure that was unacceptable to them. That would be contrary to the principles and rules of contemporary international law. In all cases, parties to the convention had an obligation to settle their disputes by peaceful means, in accordance with the Charter of the United Nations. His delegation hoped that the parties could hold direct consultations and negotiations on the basis of respect for the principles of the Charter, equality and mutual advantage.

39. His delegation firmly supported the position of the many delegations which were opposed to the possible use by the parties of the opportunity to make claims on the sovereignty or other rights of a continental or island territory as a cover for political annexation and expansion by the stronger at the expense of the weaker.

40. During the general debate in New York, his delegation had drawn the attention of the Conference to the need to supplement the provisions of article 21 relating to innocent passage. What was required was to add a provision enabling the coastal State to adopt, in conformity with the provisions of the convention and the rules of international law, legislation and regulations applicable to innocent passage for the navigation of warships in territorial waters. In the interest of all concerned, the coastal State should have the right to require authorization or prior notification for the passage of warships through the territorial sea.

41. As to the signature of the convention, his Government wished to state that, as the only legitimate Government of the people of Democratic Kampuchea, it alone was entitled and qualified to conclude treaties, conventions or other international instruments or to accede to them in the name of Kampuchea. Therefore, with regard to both internal law in Kampuchea and international law, the treaties or other agreements signed illegally by the régime established in Phnom Penh by foreign armed forces, and in particular the so-called treaty of peace, friendship and co-operation of 18 January 1979 signed with the occupation authorities, were devoid of any legality and were therefore inap-

plicable to the people of Kampuchea or its Government. Such instruments, which sought to legalize aggression in Kampuchea and establish the law of the jungle in international relations, were contrary to the principles of the Charter of the United Nations and the rules of international law.

Mr. Ballah (Trinidad and Tobago), Vice-President, took the Chair.

42. Mr. MAKEKA (Lesotho) said that if his country, which was land-locked, was to use the seas and enjoy their benefits, it must first and foremost be assured of free access. Such right of transit was a *sine qua non* for its accession to the proposed convention. While his delegation welcomed the fact that that right was provided for in Part X of the second revision of the negotiating text, the relevant provisions were unfortunately no improvement on those of the 1965 Convention on Transit Trade of Land-locked States.[1] Aircraft were omitted from the list of means of transport in article 124 on the use of terms, even though reference was made to overflight and air routes in no less than 17 articles, including articles 38 and 87. Because of its highly mountainous topography, his country relied heavily on the use of aircraft for the transport of persons and goods.

43. In his delegation's view, pipelines and gaslines were a normal means of transport and there was no reason for treating them differently. All means of transport could be used only in agreement with the transit or access State. Aircraft, pipelines and gaslines should all appear among the means of transport defined in article 124.

44. His delegation did not believe that the negotiators of article 127, paragraph 2, intended the means of transport to be subjected to taxation by the transit or access State. The word "taxes" should therefore be deleted.

45. With regard to article 131, his delegation considered that the maritime ports referred to were those of third States and not of the access State, where ships flying the flag of a neighbouring land-locked State should enjoy the same treatment as those flying the flag of the access State or must otherwise enjoy most-favoured-nation treatment.

46. In giving coastal States jurisdiction over resources which hitherto belonged to all, the creation of an economic zone for a coastal State could be said to be an historic act by the Conference. Land-locked States could not physically extend their jurisdiction in that regard, and it was only fair that their rights should be accommodated in the new concept. The 1973 declaration by the Organization of African Unity[2] provided that nationals of land-locked States should have the same rights as nationals of coastal States in the exploration and exploitation of the living resources of the economic zone. Coastal States were now asking the land-locked States to stand idly by while they divided the oceans and their resources among themselves. Since the establishment of zones resulted in the land-locked countries being deprived of existing rights, it was only logical that their rights should be accommodated. Examination of article 69, which purported to provide for such accommodation and should be read in conjunction with articles 61, 62, 71, 72 and 296, showed that land-locked States had gained nothing in that regard. It was inequitable to restrict their rights to the surplus. No land-locked country could ever hope to have a harvesting capacity approaching that of a coastal State.

47. The rights of land-locked countries were further curtailed since they were limited to articles 61 and 62, which, while giving coastal States all possible rights, including the right to determine the allowable catch, harvesting capacity and surplus, did not require the rights and interests of the land-locked States to be taken into account. The latter's rights to the surplus were on a par with the rights of coastal States and it was unfair to subject the land-locked States to the conditions of article 62, paragraph 4. Nationals of such States should be treated as equals of those of coastal States or given preferential treatment.

48. Article 71 constituted a further restriction on the alleged rights of land-locked States, especially since such States represented the majority of the poorest among the poor countries. Their participation in the zones of the States which claimed to be dependent on fisheries could not affect those States adversely. Article 72 was completely irrational: to exclude the land-locked States from joint ventures was to exclude them from essential capital and technology, and thus from real participation. It was also unfair to restrict them in their disposal and use of the resources they had harvested.

49. Article 296, paragraph 3, was ambiguous and contradictory. It was designed to deny the existence of the rights referred to in article 69. It was legally incomprehensible to state that a right was available and to add that one party to a dispute arising from the exercise or non-exercise of that right should not be obliged to submit to a settlement of the dispute. The reference to "any dispute" was too sweeping and the paragraph should be deleted.

50. As far as the continental shelf was concerned, in view of the extension of the coastal State's jurisdiction beyond the 200-mile limit, the rate of contributions provided for in article 82 should be increased.

51. There was no provision in the second revision of the text to ensure that mankind received any benefits in real and practical terms. The proposal for the establishment of a common heritage fund was designed to provide such an assurance. It should be emphasized that all developing countries would benefit from the fund. No delegation had raised a substantive objection to the proposal, but it had repeatedly been stated that the idea was too late. It had recently become difficult to procure conference facilities for the relevant meetings, despite promises to the contrary. His delegation believed that the proposal still had a chance and welcomed constructive amendments to it.

52. His delegation welcomed the package deal in document A/CONF.62/C.1/L.28/Add.1, which could form a good basis for the third revision. However, the phrase "on a non-discriminatory basis" in article 140, paragraph 2, was not clear. His delegation suggested that the wording of article 82, paragraph 4, to the effect that particular account should be taken of the land-locked and the least-developed countries, should also be included in article 160, paragraph 2.

53. His delegation fully shared the concern of the land-based producers and potential producers of minerals, whose economies were bound to be affected adversely by deep-sea mining, and urged that negotiations on the subject should be continued and the proposals in question taken into account in the revised text.

54. Monsignor BRESSAN (Holy See) said that the Holy See considered the strengthening of article 136 extremely important, because whatever the legal régime governing the Area it must be managed in such a way as to benefit all mankind. The Church believed that mankind constituted a single family whose division into nations should not serve as a pretext for dissension but should rather be used as a means of furthering development. The joint management of the wealth of the sea-bed of the Area for the good of all, and particularly the poorest nations, was an example of universal solidarity.

55. His delegation had followed the discussions with interest and had sought through private contact to help draft articles which might be adopted by consensus. It had been struck by the number of delegations seeking a new international economic order based on ethical principles. Subordination to purely material interests would make it impossible to overcome the difficulties and excessive attachment to the concept of the supreme power of States must be abandoned. States had a sovereign responsibility, but they must respect the boundaries they had themselves recognized for an international Authority and the principles of universal solidarity. The Holy See had helped to form public opinion and guide the leaders of nations towards a universal view of the economic order. Such a global approach was necessary to over-

[1] United Nations, *Treaty Series*, vol. 599, No. 8641, p. 41.

[2] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/33.

come the remaining obstacles to the adoption and implementation of the convention, which could no longer be postponed. All participants welcomed the fact that the end of the negotiations was in sight but all wished to improve the informal composite negotiating text further. However, if questions upon which agreement had already been reached were reintroduced, the discussions would be uselessly prolonged and might end in failure. His delegation hoped that the spirit of collaboration which had dominated the Conference would continue to prevail in the execution of the agreements reached and their revision or amendment if necessary.

56. The viability and effectiveness of the Authority in serving the interests of mankind were of particular importance. A system must be established which would benefit all nations and individuals, meet world needs, contribute to the progress of the developing nations and encourage international co-operation. Efforts should be made to avoid jeopardizing States whose economy was largely dependent upon mining and attention must be paid to the environment and the conservation of resources for future generations. In addition, the rights to dignity and well-being of those working for the international community must be guaranteed.

57. Greater justice must be achieved among nations and peoples through a new international economic order. The Authority should not be set against States but should serve the peoples of the world. The international community had a duty to co-ordinate and encourage development in a spirit of justice and solidarity and to ensure that the least developed countries were given preferential treatment in the sharing of profits. That principle echoed the concept embodied in the Charter of the United Nations concerning the promotion of the economic and social advancement of all peoples, and social progress and better standards of life in larger freedoms.

58. Mr. LARSSON (Sweden) said that encouraging progress had been made during the current session and the new texts of Part XI and annexes III and IV provided a promising basis for consensus. However, his delegation felt that further negotiations were needed before the informal composite negotiating text became generally acceptable.

59. One of the outstanding hard-core issues had not even been negotiated, namely, the question of the composition of the Council referred to in article 161, paragraph 1. The present wording virtually excluded a vast group of small and medium-sized industrialized countries from representation on the Council during excessive periods of time, despite the fact that those countries would make considerable contributions to the financing of the Enterprise. His delegation was open to any suggestion which might remedy that situation, such as a slight increase in the membership of the Council. In working to find a solution, his delegation would be careful not to upset the balance established for the voting procedure in article 161, paragraph 7. The delegations which had argued that further negotiations would destroy the compromise reached appeared to wish to avoid a substantive discussion and their attitude ran counter to the atmosphere of compromise and consensus which had characterized the Conference. His delegation strongly urged that a foot-note should be added to article 161, paragraph 1, in revision 3 stating that further negotiations were needed to solve the problem for small and medium-sized industrialized countries.

60. His delegation was not entirely satisfied with the present wording of article 76, which defined the outer limit of the continental shelf. It attributed too large a portion of the sea-bed to coastal States, to the detriment of the international sea-bed area, thus depriving mankind of the extensive maritime space which should be part of its common heritage. A clear, simple and unambiguous formula should be found to define the outer limit of the continental shelf and article 76 did not satisfy that requirement. The text in the second revision on the delimitation of maritime areas between States with opposite or adjacent coasts constituted an appropriate basis for further negotiations with a view to reaching a final consensus. In that connexion, he drew attention to the link between the three elements in the delimitation problem, namely, the delimitation criteria, the interim measures and settlement of disputes. In his delegation's view, it was extremely important that the system for the settlement of disputes under article 298, paragraph 1 (*a*), should cover all types of disputes, regardless of whether they arose before or after the convention entered into force.

61. His delegation could accept the articles on innocent passage through the territorial sea as they now stood. Sweden required prior notification from foreign warships and other government-owned vessels used for non-commercial purposes of their passage through the Swedish territorial sea; that requirement in no way affected their right to innocent passage through that sea. It was therefore his delegation's understanding that that requirement was compatible with the rules and principles of present international law and that the legal situation would not be changed by the entry into force of the new convention.

62. His delegation also endorsed the proposed new rules regarding passage through straits. He noted the exception from the transit passage régime contained in article 35, subparagraph (*c*). That exception was of great importance to Sweden since it would apply to the straits between Sweden and Denmark and the straits between Sweden and the Åland Islands.

63. For his Government, marine scientific research in the economic zone and on the continental shelf beyond 200 miles should be subject to only a few restrictions. The provisions in the second revision of the text did not fully reflect his delegation's basic views on that issue.

64. Lastly, his delegation was in general satisfied with the work carried out thus far on the settlement of disputes, the general provisions and the final clauses. In connexion with article 305, he referred to the relationship between the new convention on the law of the sea and the conventions relating to the laws of war and the law of neutrality, the latter being a field to which Sweden attached great importance. That question was also linked with the wider question of how the convention on the law of the sea was to operate in times of war for both belligerent and neutral States. It was questionable whether the provisions relating to the régime for the territorial sea, *inter alia*, could be fully applied in such a situation. It was his delegation's understanding that the rights and obligations resulting from the conventions on the laws on warfare and on neutrality, particularly the Hague Conventions of 1907, would not be affected by the new law of the sea.

65. Mr. SCOTLAND (Guyana) expressed his delegation's appreciation for the progress made during the current session. In his delegation's view, the most interesting developments had taken place in the First Committee, where States with strongly opposed interests had been able to present a text which all had found tolerable if not acceptable. His delegation saw that text as a negotiating text and would study it with a view to making constructive comments at the next session.

66. His delegation welcomed the improvements in the text of article 140, paragraph 2, concerning the provision for the sharing of benefits derived from activities in the Area on a non-discriminatory basis. It found the voting procedures of the Council over-complex and disquieting. Although only three items appeared to be subject to the consensus procedure, in fact a large number of items were involved. Article 162, paragraph 2 (*v*), subjected orders issued under the provision to the consensus procedure if they were to remain binding after 30 days, although such orders were initially decided upon by a three-fourths majority. Article 161, paragraph 7 (*f*) and (*g*), envisaged the consensus procedure for settling any issue or taking any decision which might arise under them.

67. The Conciliation Committee envisaged under article 161, paragraph 7 (*e*), would be required to set out the grounds on which a proposal was opposed if it failed to reconcile the differences impeding a consensus within the Council. The text was silent on the question of how the issue was to be resolved. Article 162, paragraph 2 (*j*), however, answered the question in relation to the approval of plans of work. That article was subject

not to any express majority in the Council, but to a separate procedure which ensured that, whether the plan of work was approved or not, it would pass the Council. If the Conciliation Committee failed to resolve the difficulty, the plan of work was deemed to have been approved by the Council unless the Council rejected it by consensus. The term "by consensus" had two meanings in that provision; firstly, in the absence of any formal objection, and secondly, notwithstanding the existence of a formal objection.

68. The special treatment for approval of plans of work continued in article 162, paragraph 2 (*j*) (i), under which, if the legal and technical commission recommended disapproval of a plan of work, the Council could, by a three-fourths majority, decide to approve the plan. The legal and technical commission was an expert professional body which must make recommendations that would leave no room for political judgements. It would operate in accordance with rules, regulations and procedures adopted by the Council by consensus, yet the Council could overrule its recommendations by a three-fourths majority. Such provisions appeared to have been designed to ensure that plans of work were approved whether or not approval was recommended.

69. His delegation regretted the deletion of the provision for a moratorium and hoped that it would be reincorporated in the third revision. The benefits to be derived by the developing countries from the transfer of technology (annex III, art. 3, para. 3 (*e*)) might not in fact materialize, given the likely economic situation of most developing countries during the estimated life-span of first-generation mine sites.

70. His delegation welcomed the evolution of the principle of the common heritage of mankind as part of customary international law.

71. On the question of delimitation, the presentation of the texts of articles 74 and 83 in the second revision had led to a very real effort by both interest groups to reach agreement. Consultations on that point were continuing and his delegation was satisfied that the present text formed a good basis for discussions and eventual consensus. However, in his delegation's view, interim measures and the settlement of disputes were inextricably linked with the criteria for delimitation.

72. His delegation supported the amendment to article 63, paragraph 2, contained in document C.2/Informal Meeting/54/Rev.1. There should be provision for the settlement of disputes over the fishing of stocks in the exclusive economic zone and an area beyond and adjaccent to that zone if discussions between the coastal State and other States fishing for such stocks did not lead to agreement.

73. He expressed concern about article 246, paragraph 6, which introduced a dual régime for marine scientific research on the continental shelf. The provision suggested the existence of two continental shelves, one within 200 miles and the other beyond that limit.

74. Paragraph 2 of the transitional provisions appeared to require further attention. His delegation failed to see why the enjoyment of rights by the inhabitants of non-independent Territories should be subject to the resolution of any dispute over the sovereignty of the Territory in question. Whatever the outcome of a dispute, the rights of its inhabitants must be respected and no metropolitan or foreign power should infringe them. His delegation hoped to make suggestions to improve that provision at the tenth session. In the meantime it remained committed to participating in the achievement of a comprehensive treaty on the law of the sea.

Mr. Sharma (Nepal), Vice-President, took the Chair.

75. Mr. GHARBI (Morocco) said that, while the Conference had come closer to its goal during the second part of the ninth session, the negotiations had been somewhat selective and on occasion had begun late. His delegation had been guided in the negotiations by the political will to reach global agreement on all aspects of the law of the sea and had never rejected the consensus approach, provided that it took into account the national interests of all States and the need for the more equitable sharing of world resources.

76. The compromise text proposed by the negotiating groups on issues dealt with by the First Committee constituted a step forward and proved the need for a third revision of the negotiating text. However, the negotiations had not reached the desired consensus on some provisions. His delegation welcomed the inclusion in article 161 of States which were potential producers of minerals, but felt that the article should go further and cover the group of countries which exported manpower. The human factor must not be ignored in the envisaged international production system.

77. The phrase "without prejudice to article 158, paragraph 4" should be inserted in article 162, paragraph 2, to avoid any misunderstanding about an encroachment by the Council on the competence of the Assembly of the Authority.

78. The principles governing production in articles 150 and 151 could constitute an acceptable compromise provided that access to markets for minerals derived from the Area took into account the possible losses resulting from transport costs for land-based minerals. The compensation system referred to in article 151, paragraph 4, should be precisely set out, providing guarantees to States which might be unfavourably affected by the exploitation of marine resources. Since article 162 endowed the legal and technical commission with broad and sometimes decisive powers, its compostion should be carefully considered.

79. Negotiations must continue on the transfer of technology referred to annex III in order to define the concept of technology and the obligation to transfer technology. Annex IV should guarantee the administrative and financial autonomy of the Enterprise more clearly.

80. Considerable progress had been made in the negotiations on the final clauses but those clauses must be co-ordinated with the provisions in Part XI in particular, similarly, article 306 and the amendments to Part XI must be co-ordinated. The provisions on the Preparatory Commission should limit its mandate to the technical procedures for the implementation of Part XI, particularly those concerning meetings of the principal bodies, the relationship of the Authority with the host country, the establishment of dispute settlement bodies and the financing of the Enterprise.

81. A crucial stage had been reached in the negotiations and the progress made must be consolidated by introducing the necessary improvements. The principle of the common heritage of mankind must not be allowed to suffer from unilateral measures or restricted agreements, since it was the basis of the work of the Conference. The remaining difficulties on questions concerning areas of national jurisdiction were largely residual matters or matters of detail. That was the case with Part III, "straits used for international navigation"; the present text was the result of a compromise, but required further drafting changes. The criteria for the passage of ships and aircraft should be made more precise. Although there was no political control of passage and free passage was now an accepted principle, a laissez-faire policy must be avoided in view of the risks involved for international maritime and air transport and for coastal States. The obligations assumed by user States must be accompanied by adequate provisions concerning responsibility in order to preserve the legal balance of the special free passage régime for straits as compared with the high seas.

82. His delegation endorsed the proposals by Yugoslavia concerning article 36 (C.2/Informal Meeting/2/Rev.2) and by the Philippines concerning article 25 on the supervision of the innocent passage of warships through the territorial sea. It also supported the Canadian and Argentine prorosals concerning article 63. However, the problems still posed by the outer limit of the continental shelf and the principles and criteria for delimitation of the exclusive economic zone or the continental shelf between States with opposite or adjacent coasts were particularly important and were a subject of serious concern for many delegations. The limits of the continental margin had been extended exces-

sively and without any basis in international law. Higher benefit-sharing rates should therefore be established so that the privileged States make an effective contribution to the common heritage fund. His delegation, like other members of the Arab group, maintained a formal reservation concerning article 82.

83. It was regrettable that the Conference had not yet managed to produce fundamental principles on the delimitation of the maritime areas between States with opposite or adjacent coasts. His delegation had consistently stated that international customary law should be taken into account. The rule of equity had always served to resolve disputes between States concerning delimitation on the basis of objective criteria arising from relevant factors. His delegation could not subscribe to the current wording of paragraph 1 of articles 74 and 83 since it was too ambiguous, vague and unlikely to lead to a consensus. Obviously a general clause alone would not solve bilateral problems, but a clear and honest formula must be found to safeguard the interests of all parties. Since the consultations on that subject had not yet produced any practical result, the wording of paragraph 1 of articles 74 and 83 should not be included in the third revision since it did not fulfil the conditions set out in document A/CONF.62/62.[3] At the current stage of negotiations it would be better to avoid inserting any provision on the criteria and principles of delimitation in order to leave the way open for the drafting of a formula that was legally acceptable and likely to be approved by consensus.

84. He hoped that his comments would be helpful to the joint effort which was the best guarantee of the widest possible participation in the future convention on the law of the sea. His delegation would like accession to the convention to be open not only to States but also to the liberation movements which were recognized by the regional commissions and the United Nations and had participated as observers at the Conference for many years.

85. In conclusion, he hoped that the perseverance and patience shown over the years since the Caracas session, would be crowned with the success they deserved. It was essential to ensure that the future convention was coherent in all respects and in keeping with the competence of the Conference and the spirit of responsibility expected of it.

86. Mr. MONNIER (Switzerland) said that, although the consensus rule encouraged broad agreement and forced States to negotiate until their differences were eliminated, it should not have the effect of restricting negotiations to only a few States and excluding States which had shown their interest by taking part in the discussions. The way in which some negotiations had recently been conducted both in the plenary Conference and in small groups had prompted his delegation to make that remark, which had a bearing on the way in which the collective will of States attending the Conference was formed.

87. With regard to matters dealt with by the First Committee, his delegation welcomed the agreement reached on one of the most difficult questions, namely, the voting procedure in the Council of the Authority. However, the question of the composition of the Council, which was closely linked to the question of the voting procedure, could not be regarded as settled. In fact, the provisions of article 161, paragraph 1, of the second revision were far from satisfactory in that, to all intents and purposes, they deprived medium-sized industrialized countries of the possibility of sitting on the Council. The principle of rotation, referred to in article 161, paragraph 4, as desirable rather than mandatory would scarcely remedy the situation.

88. That situation was particularly unjust since those countries, unlike the larger industrialized countries, were called upon to contribute a substantial share to the financing of the Authority and the Enterprise, without being able to obtain any benefit either directly or indirectly from activities carried out in the Area. The situation could be remedied by providing for a limited and reasonable increase in the membership of the Council, as suggested in 1979 by several medium-sized industrialized countries and by the representative of the Group of 77. Since negotiations on the decision-making procedure had concluded, the question of the composition of the Council should be reopened. Obviously, discussions on that point should not upset the agreement reached on the voting procedure or the categories of interest defined in article 161, paragraph 1. His delegation supported the proposal by the representative of Sweden that the matter be referred to in a foot-note in the third revision.

89. With regard to the issues dealt with by the Second Committee, his delegation reiterated its reservations on the provisions of article 76 concerning the outer limits of the continental shelf. Although the new provisions represented an improvement, they extended the limit too far, thereby reducing the international Area considerably. In view of the unsatisfactory nature of the provisions of article 82 concerning payment and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the current solution left even more to be desired.

90. His delegation considered unjustified and inequitable the distinction made in article 69 between developed and developing land-locked States.

91. Turning to issues discussed in the Third Committee, his delegation regretted that, under the pretext of balancing the rights of land-locked and geographically-disadvantaged States against those of coastal States in the field of scientific research, article 254 as now worded removed all the substance from the few rights granted to land-locked and geographically-disadvantaged States. His delegation noted with considerable regret the refusal of coastal States, which constituted a majority in the Conference, to take into account the interests of States which were disadvantaged by their geographical situation. It would comment on the final clauses when the report referred to in the preliminary report of the President of the Conference (A/CONF.62/L.60) became available.

92. In conclusion, his delegation wished to stress the importance it attached to the work of the language groups of the Drafting Committee for the final version of the future convention. In view of the many shortcomings in the French version of the text and the various negotiating documents, great attention must continue to be given to that question.

93. Mr. DE LA GUARDIA (Argentina) expressed satisfaction at the progress being made by the Conference, and regret at the fact that two States had adopted unilateral legislation in open defiance of the principle enshrined in General Assembly resolution 2749 (XXV), which constituted, in the view of his country and of the great majority of countries, a rule of *jus cogens*.

94. With regard to the work in the First Committee, his delegation favoured the inclusion in the third revision of the proposals contained in document A/CONF.62/C.1/L.28/Add.1.

95. In order to save time, his delegation would submit its detailed observations in writing. Those observations would refer to the absolute need to maintain in the negotiated package the system of control of the production of sea-bed resources on that point; the provisions of article 151 constituted an absolute minimum for Argentina. His delegation welcomed the inclusion of the category of potential producers among the members of the Council under article 161, paragraph 1 (*d*).

96. Turning to questions before the Second Committee, his delegation opposed the inclusion in the second revision of the present paragraph 1 of articles 74 and 83 (see A/CONF.62/L.47), because the paragraph had not been approved either in the negotiations or in the plenary Conference. In addition, the reference made in articles 74 and 83 to international law was confused and lent itself to ambiguous interpretations. There were other unsatisfactory features in those texts. For example, the formula "taking account of all circumstances prevailing in the area concerned" was far from clear. Lastly, the median or equidistance line was presented in a manner which appeared to accord to it a greater importance than to other criteria for the delimitation of the exclusive economic zone or of the continental shelf between States with opposite or adjacent coasts. If the present para-

[3] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

graph 1 of articles 74 and 83 were maintained in the third revision, the Conference would run a serious risk of disruption.

97. His delegation also found article 15 unacceptable and would withdraw its objection to it only if an acceptable solution was reached with regard to paragraph 1 of articles 74 and 83.

98. With regard to article 63, paragraph 2, his delegation, together with 14 other sponsors, had submitted a revision of the original proposal contained in document C.2/Informal Meeting/54/Rev.1. On that basis, a further rewording had been devised which had attracted the support of a large majority: its effect would be to bring article 63 into line with article 117, on the basis of the fact that article 63 referred to a special case of conservation of the resources of the high seas. He urged that that reformulation should be incorporated in the third revision. In that form, the protection of the living resources of the sea in the interests of all nations would be better ensured.

99. His delegation shared the concern of more than 30 other delegations at the fact that Part II, section 3, did not make explicit provision for the right of the coastal State to require prior authorization or notification for the innocent passage of foreign warships through its territorial sea, a right which was recognized by international law. That important question must be solved. His delegation wished to make it clear that any clarifications that might be introduced into the provisions on innocent passage would not affect in any way the legal status of passage through international straits.

100. On the question of the settlement of disputes, his delegation endorsed document SD/3, together with the amendments made by numerous delegations. It could not, however, support the foot-note in document SD/3/Add.1 which attempted to establish a non-existent connexion between the substantive negotiations on delimitation and the question of the settlement of disputes. His delegation had rejected, and rejected once more, the attempt to establish such a connexion.

101. As to the substance, his delegation welcomed the rearrangement made in Part XV. It wished to reiterate that article 298, paragraph 1 (*a*) (ii), was poorly drafted. On that point, his delegation had proposed that a cross-reference should be introduced in that subparagraph to article 298 *bis*, whose incorporation it still considered desirable. Even without such a cross-reference, however, the connexion between the two articles emerged clearly from the fact that if compulsory conciliation was unsuccessful, it would not be possible to resort to the procedures of compulsory jurisdiction in section 2 without the consent of the parties to the dispute: such was the meaning of the words "mutual consent" appearing in article 298, paragraph 1 (*a*) (ii).

102. As to the final clauses, his delegation would comment only on article 303, relating to reservations. Although his delegation did not agree with that article, it would not oppose its inclusion provided that the third revision included the foot-note contained in documents FC/21/Rev.1 and Add.1, to the effect that the article was based on the assumption that the convention would be approved by consensus and that it was, moreover, provisional, bearing in mind that certain questions had not yet been settled and might permit the formulation of reservations. Accordingly, he welcomed the indication contained in the President's report (A/CONF.62/L.60) that the foot-note in question would be retained.

103. Mr. STAVROPOULOS (Greece), commenting on matters before the First Committee, welcomed the substantial progress made during the present session and the package of amendments contained in document A/CONF.62/C.1/L.28/Add.1, and supported its inclusion in the third revision.

104. His delegation, however, wished to reserve its position on a number of points. On the question of the composition of the Council in article 161, paragraph 1, better arrangements should be made for the representation of small and medium-sized industrialized countries, as well as other States with special maritime interests. The provisions of the new paragraph 2 (*c*) of article 161 should also be reconsidered, since a practice which had proved successful in the United Nations might not work in a universal convention of the proposed scope.

105. As to the financing of the Enterprise, despite the amendments introduced into the text, further elaboration was needed on the question of the contributions by the early beneficiary States as well as by those which would not enjoy short-term benefits.

106. With regard to matters within the purview of the Third Committee, the present texts appeared to him satisfactory, but some provisions in articles 246, 253 and 264 still fell short of the expectations of those who supported the "consent régime". Those provisions should not be interpreted as imposing a strict obligation upon coastal States to grant their consent for the conduct of marine scientific research in their economic zone in cases where their vital legitimate interests were at stake.

107. As to the general provisions, his delegation welcomed the adoption of an article providing for the protection of archaeological and historical objects found in the marine environment. It would have preferred a more far-reaching provision but in a spirit of compromise it would not oppose the text before the Conference, which it considered as an acceptable minimum.

108. Turning to the question of final clauses, his delegation found the present wording of article 303, which excluded all reservations, a very wise one. Any other solution would completely undermine the results of seven years of devoted work in the Conference. He therefore strongly urged that that important article should remain unchanged.

109. With regard to the work of the Drafting Committee, the appropriate procedure was being followed: Only purely drafting amendments were being dealt with by that Committee; in case of doubt, matters were referred to the appropriate main committee for a decision.

110. He strongly supported the statement made at the 135th meeting by the representative of Ecuador and believed that mixed archipelagos should have been covered by the provision on archipelagic States.

111. Turning to the subject of the delimitation of the continental shelf and the economic zone, which was of paramount importance to his country, he expressed regret that the discussions in negotiating group 7 had never taken the form of true and meaningful negotiations, notwithstanding the efforts of its Chairman. In those circumstances, the Chairman of that Group, in his final report, had concluded that the provisions on delimitation appearing in the first revision of the negotiating text could not be considered as a basis for consensus on the issue; he had gone on to suggest a new text indicating his own assessment of alternatives which might in time secure a consensus. A major innovation of that new text was the inclusion of a reference to international law as a basis for the conclusion of any delimitation agreement. Those suggestions by the Chairman of the group had been approved by the collegium and consultations had been initiated within a group consisting of 10 delegations representing each side. That was a positive development which proved the value of the text appearing in the second revision, since, for the first time, it had succeeded in bringing about genuine negotiations on the issue. It was true that no tangible results had yet been achieved but the negotiations had started and it was hoped on both sides that they would lead to consensus. He felt that results would be achieved when the other side realized that only a balanced solution could prove acceptable to all.

112. As for the other two elements of the delimitation problem, namely, the interim arrangements and the settlement of disputes, which together with the delimitation criteria constituted a package deal, his delegation considered them as not yet satisfactory. The provisions on interim arrangements as now drafted were no more than an expression of wishes. Since they lacked the clarity and automaticity of the median-line rule, they could well prove ineffective in handling the problems that could arise during the period of negotiations. Furthermore, the failure to establish a binding procedure for the settlement of delimitation disputes, while continuing to rely on the preponderance of "equitable principles", could not but delay the attainment of an agreement.

113. In conclusion, he expressed gratification at the exceptional progress made at the present session. Should the efforts on the question of delimitation not result in a solution within the few remaining days, he felt sure that the present consultations, preferably informal, could be resumed at the next session around the promising text of the second revision, which although not perfect, was the only one which had proved its value and contained possibilities for consensus.

114. Mr. RICHARDSON (United States of America) considered that the Conference should be proud of the results achieved at the present session as a result of the firm resolve of all delegations to complete substantive negotiations: for the first time since 1973 the substance of a new comprehensive treaty was close to completion.

115. While his delegation had difficulties with certain parts of document A/CONF.62/C.1/L.28/Add.1, it nevertheless believed that the texts contained therein should be included in the third revision as a package without any change.

116. It was obviously impossible for his delegation in the allotted time to comment on all points of interpretation. It should therefore not necessarily be deemed to agree with all the interpretations offered by other delegations. His own comments would be confined to the new texts.

117. His delegation continued to have reservations about the new texts on decision-making in the Council, but recognized that no other approach seemed likely to command general support. In connexion with decision-making, he wished to stress a number of very important points. First, in order to persuade contractors that they should begin investments in sea-bed mining, it was necessary to assure them that, if qualified, they would be given an opportunity to explore the mine-site and later apply for production authorization. Despite the improvements made in articles 163 and 165, better safeguards should be sought for the legitimate rights of duly-sponsored applicants during the contract approval process.

118. On the composition of the Council, his delegation and others strongly felt that it would be a serious mistake to reopen the issue of its size. The new formulation for decision-making was based on the present composition of the Council; its expansion would throw that new formulation out of balance and jeopardize the carefully constructed compromise. His delegation therefore strongly urged that that matter should be considered closed.

119. Turning to the new provision in article 162, paragraph 2 (*c*), on the subject of nominations, he expressed his delegation's understanding that that provision applied both to the special interest groups in categories (*a*), (*b*), (*c*) and (*d*) and to the regional groups in category (*e*) to be represented on the Council pursuant to article 161, paragraph 1.

120. The text produced by the informal plenary which specified that the rules, regulations and procedures drafted by the preparatory commission applied provisionally, pending action by the Authority, constituted an integral part of the package. Its deletion or substantial modification would prejudice all the results achieved in the First Committee.

121. With regard to the transfer of technology, annex III, article 5, paragraph 3 (*e*), did not in any way contribute to getting the Enterprise into operation or making it a sturdier body. That paragraph, however, raised a very sensitive issue for his Government since it had a bearing on the United States position in other negotiations. His Government would study that paragraph and its implications critically when considering signature of the convention. His delegation consequently remained committed to its deletion.

122. The results of the negotiations on resource policy were the culmination of long and arduous efforts to reach an accommodation between beneficiary sea-bed mining countries and land-based producers of sea-bed metals. Though some aspects of those texts were far from ideal his delegation recognized that on an overall basis they constituted a balance of opposing interests and should therefore be regarded as closed.

123. His delegation had believed that negotiations concerning quota/anti-monopoly had been concluded at the spring session in New York. It had agreed to further changes at the present session only to facilitate general acceptance of the final package. In his delegation's view, there was no room for further improvement.

124. As to preparatory investment protection, it was essential that the treaty should contain an adequate set of preparatory arrangements to facilitate the incorporation of existing sea-bed exploration activities into the treaty régime and to prepare for an early start of the Enterprise.

125. His delegation welcomed the great progress made by the informal plenary, which had successfully finished its work on the settlement of disputes and all but completed substantive work on final clauses and on general provisions. In connexion with the latter, he welcomed the inclusion of a clause originally proposed by Mexico prohibiting abuse of rights. He noted that the clause in question prohibited abuse of the provision on disclosure of information in breach of obligations under the convention.

126. His delegation hoped that the desire to preserve the integrity of the text and to enhance the prospects of ratification of the convention would continue to pervade the informal plenary when it came to deal with the issues of participation and the transitional provision.

127. His delegation regretted that it had not been possible to introduce a few minor clarifications in the Second and Third Committee texts that had been negotiated among interested States and hoped that that matter could be rectified quickly. It also regretted the unwillingness of some delegations to abandon demands for significant substantive changes that could upset the balance of the convention and harm its chances of general acceptance.

128. At the present session it had not been possible to give the Drafting Committee the necessary time to complete its difficult task; his delegation believed that that Committee's work must be completed before the start of the next session. It therefore recommended that the Conference should officially request that to be done and call for all necessary facilities to be made available for that purpose. Since virtually all versions of the informal composite negotiating text had been drafted in English, the Conference would no doubt wish to review article 313 of document FC/21/Rev.1 in the light of the further work of the Drafting Committee.

129. Mr. NDOTO (Kenya) congratulated the President and other officers on the substantial progress which had been achieved at the present session on a number of outstanding issues.

130. Most of those issues fell within the mandate of the First Committee and were reflected in document A/CONF.62/C.1/L.28/Add.1. A number of compromise solutions were embodied in the provisions contained in that document and his delegation wished to state at the outset that, together with other members of the Group of 77, it did not object to their inclusion in the third revision, which should offer greater prospects for reaching agreement.

131. At the same time, it wished to make some observations on certain issues contained in that document. On the question of voting procedures in the Council, it felt that the system envisaged was likely to prove cumbersome in practice. In that connexion, it wished to refer to what amounted in effect to two different results regarding the use of consensus to decide on matters of substance: under article 161, paragraph 7 (*d*), read in conjunction with subparagraph (*e*), the absence of consensus in the Council on matters of substance resulted in a negative decision, whereas under article 162, paragraph 2 (*j*), the Council was deemed to have approved plans of work even in the absence of consensus. In the latter case, a recommendation of the Legal and Technical Commission, a subordinate organ of the Council, would appear to be binding on the Council, which was an executive organ of the Authority. While there might be merit in making Council decisions on plans of work subject to a voting system separate from that envisaged for other matters of substance under article 161, paragraph 7, his delegation suggested that further consideration should be given to the possibility of granting the Assembly the

right to deliberate on any matter on which a negative decision of the Council might result in paralysing the implementation of the Convention. That formula would be in keeping with the meaning of article 160, which recognized the Assembly as the supreme organ of the Authority.

132. In order to simplify the proposed voting mechanism—which his delegation supported in principle—the present four-tier system provided for under article 161, paragraph 7 (*a*) to (*d*), could perhaps be replaced by a three-tier system by combining subparagraphs (*b*) and (*c*) so as to provide for decisions on matters of substance to be taken by a two-thirds majority, leaving subparagraphs (*a*) and (*d*) as now drafted. There would be a consequential amendment to article 161, paragraph 7 (*g*), so as to provide that a two-thirds majority would be required for deciding the category into which a particular question fell. The same remark applied to article 161, paragraph 7 (*f*), in cases where the rules, regulations or procedures had not specified the applicable category of decision-making.

133. Turning to the question of the transfer of technology to the Enterprise, he stressed that it was important for the Enterprise to be provided with the necessary technology, which for a long time to come would remain in the hands of the developed countries. For that reason, his delegation proposed that the period within which an operator undertook to transfer technology should be increased from 10 to 25 years. On that same question of transfer of technology, he criticized the exclusion of processing and marketing technology from the provisions of annex III, paragraph 8. In view of the novelty of the technology involved, an operator should be required to undertake to transfer technology relating to the processing and marketing of manganese nodules and other minerals to be recovered from the Area.

134. With respect to the periodicity established in article 155, paragraph 4, for the Review Conference, he found five years rather long and suggested that consideration should be given to reducing the interval to three years. His delegation also supported the restoration of the provision on a moratorium which had appeared in the first revision of the negotiating text.

135. Regarding production policies, he had difficulty with article 151, paragraph 2 (*c*), and saw no reason why a fixed figure of 38,000 tons of nickel should be used as a measure of the quantity of nickel to be reserved for production by the Enterprise. The provision should be formulated in a more flexible manner, for example on a percentage basis, in order to allow for a possible expansion of the activities of the Enterprise.

136. Turning to the issue relating to the delimitation of maritime boundaries between States with adjacent or opposite coasts, he was glad to see that negotiations were continuing. His delegation, however, continued to hold the view that delimitation of those boundaries should be effected in accordance with equitable principles.

137. In conclusion, he wished to reserve the right of his delegation at future meetings of the Conference to make further statements as appropriate, since he had not been able to cover all the desired ground owing to time limitations.

138. Mr. WARIOBA (United Republic of Tanzania) said that since most of the negotiations of the Conference had been conducted in informal sessions, sometimes in very small private groups, the resulting texts were far from self-explanatory. They could make sense only as a large package deal which was a combination of small package deals, all of which made sense in the light of understandings and assurances made during the informal negotiations.

139. There were many packages: one of them was reflected in Parts II to X, concerning which his delegation had serious problems that it would state in detail at some future time. At the present stage, it would mention only a few. First, the proposed definition of innocent passage did not strike the right balance between the interests of coastal States and other States. Secondly, his delegation was extremely unhappy with the definition of straits used for international navigation, and with the scope of the provisions thereon, which put undue emphasis on military use by Super-Powers and were discriminatory in many respects. Similarly, the provisions on the exclusive economic zone impinged too much on the rights of the coastal State. As for the provisions on the high seas, they failed to put the right emphasis on international co-operation.

140. The second package consisted of Parts XII to XIV. Although the provisions of Part XII set forth the obligation of States to protect and preserve the marine environment, they still suffered from a lack of balance between the interests of the coastal and flag States, especially concerning enforcement powers. The powers acknowledged to coastal States were weak and had been encumbered by many exceptions in favour of flag States. Worse still, many safeguards had been added which seemed to protect shipping interests instead of the environment. On the controversial question of marine scientific research, great efforts had been made to accommodate the interests of coastal States and researching States, but once again the coastal States' interests had been sacrificed, particularly in the exclusive economic zone. Moreover, the texts maintained the anomalous distinction between pure and applied research. The balance had been upset even further by the introduction of disputes settlement machinery.

141. The Area and its resources were the common property of mankind, to be used for the benefit of all, especially the developing countries. Such was the only possible interpretation of the common heritage principle enshrined in General Assembly resolution 2749 (XXV). Unilateral action was nothing more than arrogant defiance of international law and world opinion. The whole purpose of the Conference with regard to the Area and its resources was to work out procedures for exploiting and equitably sharing its wealth.

142. The third package comprised Part XI and the relevant annexes. His delegation continued to maintain that the best way to guarantee equitable participation in the activities of the Area and in the distribution of its resources was through the Enterprise system. It had accepted the parallel system as a compromise but had serious reservations as to its success. Under that system, both the Enterprise and States (or State-sponsored entities) would participate in the exploitation of the resources of the Area for at least 20 years. However, whereas access to the Area by States and their entities was assured, the viability of the Enterprise was not. The provisions on the financing of the Enterprise and those on the transfer of technology were also inadequate. Third-party and processing technology, for example, were not guaranteed; the "open market" requirement made it more difficult for the Enterprise to acquire adequate technology. All those provisions suffered from having been based on data made available to the Conference by the industrialized States.

143. The exploitation of mineral resources from the Area was conditional upon ensuring that the economies of land-based producers, particularly in developed States, should not be harmed by over-production. The present text did not provide that guarantee at all.

144. He also wished to draw attention to the compromise reached on the structure, composition, powers and functions of the Authority. The first compromise in that matter had resulted in concentration of power in the Council—a body with a limited membership—rather than in the Assembly. His delegation had accepted that arrangement purely on grounds of efficiency but it did not consider the Council as of equal importance to, let alone more important than, the Assembly, which was the supreme organ of the Authority.

145. The second important compromise related to the composition of the Council and its decision-making procedure. In order to protect themselves, the industrial States had secured over-representation on the Council and the introduction of a system of decision-making which was potentially capable of causing paralysis.

146. The parallel system had been presented as an interim one, to last for 20 years: if it did not work, a new system might come into operation. His delegation had insisted that, at the end of that

period, the Enterprise system should automatically be introduced, but it had been prevailed upon not to prejudge what system should be favoured at that stage. On that basis, his delegation had urged that neither the parallel system nor the Enterprise system should prevail, but that the review conference should decide on the adoption of one system or the other. Before such a decision, therefore, there should be a moratorium on exploitation. That formula had not been accepted by the industrialized States and, in the text now before the Conference, it was proposed that the review conference should take the decision by a two-thirds majority and await ratification of that decision by two-thirds of the parties to the convention.

147. The text of Part XI contained many details based on assumptions as to the nature of the industry of sea-bed mining but the amendment procedure was very complicated. The Group of 77 had consistently advised against entrenching details which might later prove to be impracticable. It had nevertheless conceded the inclusion of those details in order to demonstrate its earnest desire to arrive at a universally accepted convention.

148. Despite his delegation's reservations on some of the packages, it was prepared to interpret the present text in the light of the undertakings, assurances and understandings agreed on during the negotiations. They included the establishment of a fair balance between the interests of States and the promotion of international co-operation.

149. During the negotiations, the assurance had repeatedly been given that the parallel system would work and that the Enterprise would obtain the capital it needed, at least for one project in order to establish its viability and attract capital from the open market; also, that the Enterprise would receive technology and that sea-bed mining would not affect land-based production. It was on those understandings that his delegation, mindful of the immense efforts which had gone into the drafting of the text, was prepared to consider that text as a basis for the final round of negotiations.

150. Mr. MARTYNENKO (Ukrainian Soviet Socialist Republic), referring to questions within the competence of the First Committee, said that significant progress had been made at the current session, including progress on the important political question of decision-making machinery within the Council, a matter on which the possibility of concluding a convention was heavily dependent. His delegation remained firmly of the opinion that the machinery in question must be based on the principles of equality and mutually beneficial co-operation between the different socio-economic systems and the main groups of States represented in the Council. It had thought the best means of settling the question to be that proposed in article 161, paragraph 7, of the second revision, but had also been prepared to endorse a requirement for only a two-thirds majority. It found the proposal that had ultimately been made by the working group of 21 in document A/CONF.62/C.1/L.28/Add.1 far from satisfactory, for it introduced three elements into decision-making and divided questions of substance into three categories. But, in the interests of compromise and of a package solution of the outstanding issues, his delegation would go along with that proposal and with the provision now suggested with respect to financing, including the financing of the Enterprise. It considered the provisions of article 151, concerning the delicate problem of a limit to sea-bed production, to represent a balanced compromise.

151. While the texts proposed as a result of the negotiations within the Second Committee were not perfect, a delicate balance had been found between the differing positions that had been expressed. The provisions on the delimitation of economic zones and of the continental shelf that had been included in the second revision as the result of negotiations within negotiating group 7 during the first part of the Conference's ninth session offered the best chance of reaching a consensus.

152. The Third Committee, too, had been successful in its work at the current session. In the view of his delegation, the drafting changes proposed by the Chairman of that Committee in documents A/CONF.62/C.3/L.34/Add.1 and 2 could be included in their entirety in the next revision.

153. His delegation's views on general provisions were well known. However, in view of the spirit of compromise that had been demonstrated by other delegations in the negotiations on the subject, it would not oppose the wording that was now proposed for that section. With regard to the settlement of disputes, his delegation was prepared to support the suggestions made by the President of the Conference on conciliation provisions in documents SD/3 and Add.1, subject to the incorporation of the changes that had been accepted during the informal plenary meetings. Nor would it oppose the suggestions made by the President in his note on final clauses (FC/21/Rev.1 and Add.1), although it was not satisfied with all the articles in question.

154. The task of the Conference, at its next session, must be to build on the agreements—often on difficult questions—that had been reached at the present session by concentrating on those issues that had yet to be resolved. In that connexion, it was disturbing to see the attempts of some delegations to reopen questions, such as that of the composition of the Council, which had already been settled. His delegation was categorically opposed to such attempts, and to the proposal to insert a foot-note to article 161, paragraph 1, which was a matter that required further discussion. To seek to review already established provisions, such as articles 21 and 63 and the articles on the régime of the high seas, might bring the long and patient work of the Conference to nought and represented an infringement of the sovereign rights of many States, especially those that were land-locked or geographically disadvantaged.

The meeting rose at 1.15 p.m.

137th meeting

Tuesday, 26 August 1980, at 3.25 p.m.

President: Mr. H. S. AMERASINGHE

General debate (*continued*)

1. Mr. FARIVAR (Iran), reiterating his country's position of principle on certain questions which, in his opinion, remained outstanding or had not yet been satisfactorily resolved, said that the right of innocent passage through the territorial sea of a State should not be accorded to warships, which could not be assimilated to merchant ships, and that the passage of such ships should be subject to prior authorization by the coastal State. In that connexion, the only concession which his delegation was prepared to make concerned the part of the territorial sea that comprised a strait used for international navigation and constituted the obligatory route for transit passage between two parts of the high seas. But even in that case, the passage of warships should take place with due respect for the sovereignty of the State bordering the strait. Similarly, his delegation opposed the inclusion of the right and freedom of overflight in the area of the territorial sea in Part III of the negotiating text, since the air space over that portion of the territory of the coastal State was, according to international law, subject to the sovereignty of that State.

2. Concerning delimitation of the exclusive economic zone and