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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

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the continental shelf between States with opposite or adjacent coasts, his delegation doubted whether the efforts made in that area would be successful and would have been satisfied with a reference to international law alone, without any further explanation or clarification. Basing itself on international law and the practice followed by the States of the region, Iran had consistently advocated the need to devise equitable solutions in delimitation operations, using the median or equidistance line and taking account, in all cases, of the particular circumstances prevailing in the area to be delimited.

3. His delegation welcomed the definition of "States with special geographical characteristics" contained in the second revision of the negotiating text (A/CONF.62/W.P.10/Rev.2 and Corr.2-5). That definition would avoid the difficulties inherent in any definition based on numerical criteria and, at the same time, it responded to the legitimate concerns of countries which, like Iran, bordered enclosed or semi-enclosed seas, generally poor in living resources, and which, for adequate supplies of fish for their populations, were obliged to extend their fishing activities into the economic zones of other States in the region or subregion. With respect to enclosed or semi-enclosed seas, Iran welcomed the idea of voluntary co-operation between States bordering such seas, since any obligation imposed in that respect could have harmful consequences.

4. On the question of the régime of islands, Iran in principle opposed any distinction between natural land areas which were above water at high tide. In a spirit of compromise, however, his delegation would agree to the sole article in Part VIII, but not without reserving the right to reject any extensive interpretation to which that article might give rise in the future.

5. His delegation was prepared to recognize the freedom of transit of land-locked States subject to reciprocity. For example, a State which possessed a sea-coast might nevertheless wish to have the right of transit through the territory of a land-locked State for reasons of distance from the sea or because of the existence of a road system better adapted to its needs. Because of the reduction in costs made possible by such an alternative, it could be extremely important, especially for the least-developed countries.

6. With respect to the legal status of the international area, his delegation repeated its wish to remain faithful to the principle of the common heritage of mankind, which was a peremptory norm of international law, and to do everything possible to ensure that the relevant provisions of the convention were compatible with that principle. Its main concern was to ensure that the future Enterprise enjoyed the conditions necessary for the successful exploration and exploitation of the sea-bed, at both the technical and financial levels, without being paralysed by the voting system in the Council. Furthermore, the Conference should not lose sight of the need to preserve the interests of all the States members of the international community, and more particularly of deep-sea mineral exporters.

7. With regard to the protection and preservation of the marine environment, his delegation refused to agree to any provision which would limit the coastal State's freedom to establish regulations concerning certain particularly vulnerable parts of its exclusive economic zone because of its geographical, economic or biological characteristics. It might have been sufficient to leave the competent international organizations to draw up a list of special areas of that kind and to leave the States concerned to adopt such laws and regulations as they felt were necessary to safeguard those areas.

8. As to the implementation of the regulations on the prevention of pollution in the zone situated beyond the territorial sea, his delegation considered that, for a country like Iran, which had very long coast lines and whose adjacent zones were extremely vulnerable to pollution from large tankers, most of which only travelled in transit through its economic zone without putting in at its ports, the system set forth in the negotiating text was not very useful. The enforcement powers which that text accorded to the coastal State were insufficient compared with those it granted to the port State. The Conference should therefore reconsider that question and make the conditions established in the text more flexible, limiting the obstacles to possible legal action by the coastal State against offenders. His delegation could not be satisfied with the purely monetary penalties provided for in that respect, especially since such a provision was at variance with Iranian law.

9. In conclusion, he expressed the hope that questions such as the participation of liberation movements in the convention, which were of great importance to his country, would be considered as early as possible.

10. Mr. BRENNAN (Australia) said that the progress achieved in the First Committee (see A/CONF.62/C.1/L.28 and Add.1) had brought within reach the completion of negotiations on the basic structure of the system of exploitation of the resources of the seabed beyond national jurisdiction. In particular, the tough negotiations on the question of voting in the Council had been successfully completed. The system of voting devised for substantive questions provided the necessary measure of flexibility, in view of the complexity of the issues with which the Council would be dealing.

11. On the subject of production policies, Australia, although itself a producer of sea-bed metals, would have preferred a system under which there was no production limitation clause. However, his delegation would agree to the insertion of such a clause in the light of the importance which land-based producers generally attached to it and in a spirit of co-operation. But it was also essential that the formula adopted should be backed up with anti-subsidization and market-access clauses. Although it had been decided to include a market-access clause, no anti-subsidy clause had yet been negotiated. Recognizing that the production policies provided reasonable scope for the development of sea-bed mining, even in periods of low consumption growth, and that the essential needs of land-based producers were being met, his delegation supported the inclusion of article 151, paragraph 2, in the third revision.

12. On the financing of the Enterprise, whose viability must be ensured, his delegation considered that States parties needed to know the maximum amount of their contributions before ratifying the convention. There was also a need to avoid a shortfall provision which would act as a disincentive to early ratification. In that connexion, the solutions proposed by the Chairman of the First Committee in his report constituted an improvement on the provisions in the present text. Subject to the clarification it had requested concerning the new clause proposed for article 161, paragraph 2 (*c*), his delegation also supported the other changes mentioned in the report.

13. Referring to the work of the Second Committee, his delegation considered that the package agreed on, in particular with respect to the continental shelf, was now close to the form which was likely to command consensus. But it was still not satisfied with article 82, both from a practical standpoint and on grounds of principle. Article 76, paragraph 8, concerning the Commission on the limits of the continental shelf, was also a source of concern. Noting that consultations had taken place on a revised compromise text for article 63, his delegation considered that the chances of consensus would be enhanced if the renewed concerns expressed on that issue were to be reflected in the revised text. Since the provisions of article 21, relating to innocent passage, represented the results of a very carefully negotiated package, reopening that issue would not, in his opinion, contribute to the endorsement of the convention by consensus.

14. His delegation considered that negotiations in the Third Committee, like those in the Second Committee, had been essentially completed.

15. But with regard to the new general provisions (see A/CONF.62/L.58), it was concerned that, in an understandable effort to achieve consensus and to accommodate the special wishes of particular States, there had been some departures from accepted legal concepts. That comment applied to article 305, paragraph 6, and more particularly to paragraph 2 of the new draft ar-

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ticle on the protection of archaeological objects. His delegation supported the inclusion in the third revision of the text of the draft articles on final clauses and the amendment of the provisions on dispute settlement (see A/CONF.62/L.59).

16. At the advanced stage which the work of the Conference had now reached, the work of the Drafting Committee assumed particular importance, and for that reason his delegation regarded it as essential that the Committee should be in a position to submit a comprehensive set of recommendations at the next session of the Conference.

17. Mr. PINTO (Sri Lanka) welcomed the compromise solutions resulting from the work of the Second and Third Committees, the success of the efforts made in the area of dispute settlement, and the substantial progress achieved in the negotiations on the general provisions and final clauses. He reminded the participants that at the eighth session his delegation had made a suggestion intended to redress the inequitable consequences of the application of draft article 76 to a continental margin having specified characteristics. As Mr. Aguilar, Chairman of the Second Committee, had intimated in March 1980 (see A/CONF.62/L.51),[1] the negotiations on that question carried out under his guidance had resulted, thanks to the co-operation of all concerned, in the drafting of a carefully balanced text.

18. His delegation considered that the most spectacular success achieved at the current session concerned the solutions found to the complex issues before the First Committee, solutions which, although not entirely satisfactory to every delegation, nevertheless represented the basis for a broadly acceptable compromise. The proposals on decision-making within the Council were particularly important since, in his opinion, they constituted a delicate balance between various factors such as the size of the Council, the representation of the various interests, the representation of geographical regions, the Council's powers and functions, and the principle of the separation of powers between the various organs of the Authority.

19. With regard to production policies, his delegation welcomed the consensus which was emerging on the text of articles 150 and 151, although it doubted whether article 150, subparagraph (*i*), would serve its purpose and felt that it might have been better to have thought in terms of a safeguard clause rather than to have inserted that subparagraph, which sought in somewhat unclear terms to ensure market access.

20. His delegation deeply regretted that the negotiators had been unable to agree on complete tax exemption for the Enterprise in recognition of its unique character and objectives. However, it welcomed the changes made in the statute of the Enterprise which tended to enhance its financial independence, in particular through the new provisions of annex IV, article 11, paragraph 3 (*f*), on the repayment of interest-free loans.

21. Much work remained to be done. Since it had been decided to postpone the solution of some delicate legal, technical and even political problems concerning the rules, regulations and procedures to be adopted by the Authority by consensus, the Conference was able to focus its attention squarely on the following phase of its work and on the preparations for the establishment of the Authority. In particular, it would be necessary to study the many problems connected with the entry into force of the convention, the preparatory commission, its composition, its terms of reference, and, most important, its rules, regulations and procedures, which should perhaps reflect those of the future Authority. His delegation would like to see the successful conclusion of negotiations concerning measures to promote ocean mining ventures through the establishment of certain guarantees for pioneers in that area.

22. Having become aware of the urgent need to strengthen the scientific and technical infrastructure of Sri Lanka in order to take full advantage of the possibilities afforded by the new convention on the law of the sea, his delegation wished to explore, with other interested delegations, ways of securing the necessary financial assistance for achieving that aim. It was surprised that the enthusiasm aroused by the question of the transfer of technology for deep-sea mining had not been matched in regard to far more familiar and accessible areas such as fisheries and the development of off-shore resources. But it had every hope that the new convention would remedy that situation and that new initiatives would be taken in that direction in co-operation with such organizations as the International Oceanographic Commission of UNESCO, the Inter-Governmental Maritime Consultative Organization and the International Hydrographic Organization in the field of science and scientific research, and with such organizations as FAO in the field of fisheries and the development and application of fishery management techniques.

23. Mr. BEESLEY (Canada) congratulated the Chairman of the First Committee on his excellent report and associated himself, in particular, with the Chairman's plea to the delegations concerned to continue to consult and negotiate on unresolved issues, such as the nickel production formula. Since 1976, Canada and other countries had sought to devise a formula to ensure the complementary development of land-based and sea-based resources in equitable conditions for all. However, the revised text proposed by the co-ordinators of the working group of 21 contained no provision on unfair practices and an extremely weak provision on market access.

24. His delegation was particularly surprised to note that the minerals extracted from the sea-bed beyond the limits of national jurisdiction would be treated not as imports but as minerals extracted from within national jurisdiction, just as if they were taken from a land-based mine. It thus reserved its position on that point, and on the production formula proposed in article 151, paragraph 2 (*b*). Since it was desirable that those issues should be solved to the satisfaction of all the parties directly affected, his delegation would be pleased to participate in negotiations leading to a generally-acceptable solution.

25. While it considered that considerable progress had been made with regard to voting procedure within the Council, his delegation was concerned about some aspects of the provisions regarding the Council's composition. For instance, although article 161, paragraph 2 (*c*), on members nominated by the groups, represented an improvement, the wording was, in his view, insufficiently clear. It should be specified that the groups referred to were those listed in article 161, paragraph 1 (*a*) to (*e*), and not only regional groups. It would also be useful to define more clearly how each group was constituted. Although his delegation welcomed the fact that it had now been clearly specified that only net exporters would be eligible for the land-based producer group, it still hoped that its proposal that only land-based mining production be taken into account would be adopted.

26. His delegation considered that the Authority should be in a position to ensure the protection of the marine environment. It had therefore noted with concern that the latest proposals relating to the powers of the Council made general decisions on the protection of environmentally-sensitive areas subject to a three-fourths majority and appeared to make the exercise of the power to issue stop-work orders subject to that same rule. In its opinion those provisions were contrary to the fundamental obligation of all States to preserve the environment in accordance with the provisions of article 192.

27. While his delegation was satisfied with the outcome of the negotiations in the Second Committee on the continental margin, it continued to reserve its position concerning the precise provisions on revenue-sharing and on the existing wording of article 76, paragraph 8, relating to the recommendations of the commission on the limits of the continental shelf.

28. His delegation considered that the wording of article 63 should be considerably strengthened and that paragraph 2 of that article should be amended so as to make it more consistent with articles 117 and 118, since they all related to the same question.

29. As to the delimitation of maritime boundaries between

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

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States with opposite or adjacent coasts, his delegation considered that the views expressed by the two groups concerned were no longer very far apart. In its opinion, the provisions of articles 74 and 83 of the second revision of the negotiating text represented the best basis for consensus on the question, although it still had reservations about some aspects of the text.

30. With regard to the work of the Third Committee, his delegation continued to be concerned about the phrase "detailed exploratory operations" in article 246, paragraph 6, which might give rise to an infringement of the sovereign rights of the coastal State over the resources of the continental shelf. It therefore proposed that the word "detailed" should be replaced by the word "specific" so that there could be no suggestion that a coastal State might be obliged to reveal proprietary information about exploration and exploitation activities protected by national legislation.

31. Referring to the proposals emanating from the plenary Conference, his delegation was able to support the President's proposals for the improvement and strengthening of the provisions of the second revision of the negotiating text on dispute settlement. However, the role of the preparatory commission was a source of increasing concern to his delegation. Although its composition and mode of operation were not yet known, very far-reaching powers were given to it in the proposed revision of the negotiating text; in his opinion, the Conference should seriously consider whether that was what it wanted.

32. In conclusion, he reminded the participants of the fate of the 1958 Geneva Conventions on the law of the sea, which had not even lasted 10 years, because they had not adequately reflected the demands of the developing countries. It was still not too late to reconsider some of the proposals before the Conference with a view to reflecting more effectively the interests of the many who were not wealthy, who were not industrialized, who were not technically advanced, but who represented the vast majority of mankind.

33. Mr. MIZZI (Malta) considered that the ninth session of the Conference as a whole had been a marked success, largely owing to the willingness shown by the various interests involved to reach a compromise and to the restraint which many delegations had displayed, in the belief that a convention that had the support of all States was more conducive to peace, stability and co-operation among nations. The third revision of the negotiating text would be an improvement on the second, but it would still not be the final text because, apart from the fact that it contained provisions which were still being negotiated, it contained others which required further polishing.

34. Since his delegation had been the first to request that the sea-bed and ocean floor beyond the limits of national jurisdiction should be declared the common heritage of mankind, it naturally had a special interest in that question. However, it noted with regret that the international Area had shrunk considerably since the 1970 United Nations declaration on that question (resolution 2749 (XXV)) and, what was even more serious, the exploitation of the resources of that Area required very sophisticated technology and highly capital-intensive ventures. That fact made his delegation sceptical as to the financial benefits which would accrue to the international community as a whole and to the developing countries in particular.

35. His delegation was also concerned about the question of representation on the Council. While it did not want to undo the compromise solution reached after months of hard negotiations, it wished to point out that, in the opinion of many delegations, the text proposed should not be considered as the last word and that it could be further improved in order to give a greater number of States a better chance, through rotation, to sit on the Council at least once.

36. In his view, the most serious failure of the Conference concerned the settlement of disputes. It did not see the point of agreeing on elaborate regulations for the utilization of the seas and oceans when those provisions were not enforceable against those who infringed them or chose to ignore them. To be forced to settle a dispute through a compulsory and binding third-party procedure might be considered by some States to be a violation of their sovereignty, but to agree to be so bound was an exercise, not a denial, of that sovereignty. Even less comprehensible were the provisions of the negotiating text which allowed States to exclude certain disputes from settlement through the procedures which applied to other disputes of the same kind. Negotiations should thus be pursued on that point in order to reach at least a compromise formula which would give the future convention a better claim to the title of the law of the sea.

37. The question of the delimitation of the maritime boundaries between States with opposite or adjacent coasts had so far eluded a consensus. However, although the relevant provisions of the second revision of the negotiating text could not be regarded as final, they nevertheless offered, in the opinion of most delegations, the best basis for an agreed solution. In that connexion, his delegation wished to stress that the problem involved three elements—substantive rules, dispute settlement and interim measures—which were so closely linked that consensus on any of them was impossible without consensus on the other two as well.

38. As to the innocent passage of ships, he reminded the participants that Malta had now become a sponsor of the proposal for the incorporation in article 21 of a clause under which warships would be required, in order to pass through a State's territorial sea, to obtain the prior authorization of that State or to notify it in advance. Because of its seriousness, the proposal should be given all due attention by the Conference.

39. Lastly, his delegation supported the proposal authorizing national liberation movements to become parties to the convention and expressed the hope that the decision on the choice of the headquarters of the Authority would be taken at the forthcoming session.

40. Mr. WOLF (Austria), speaking on behalf of his delegation and as Chairman of the group of land-locked and other geographically disadvantaged countries, which numbered 55 now that they had been joined by Zimbabwe, said that the current negotiations had always had the goal of hammering out a universal convention which respected the legitimate interests of all States. However, the text which was being worked out accorded wider recognition to the claims of some States, particularly coastal States with a broad continental margin, than to the claims of others. It would be mistaken to believe that such prerogatives should be sanctioned by law. On the contrary, the law should safeguard the interests of those States which encountered difficulties because of their geographically disadvantaged situation, and should furthermore encourage those States to enlarge their maritime interests as equal members of the international community. The text hardly satisfied those requirements. Consequently, the provisions which took those elements into account would have to be interpreted and applied in a manner favourable to the legitimate demands of that group of States, for that was the only way of preventing the convention from being spoken of in future as merely a "coastal States' convention".

41. His delegation was nevertheless convinced that the agreement by the First Committee constituted a major breakthrough. The introduction into international law and the universal acceptance of two new concepts—the principle of the common heritage of mankind and the concept of a public international resource management institution—were of overriding importance. Those innovations might have consequences which went beyond the realm of the sea.

42. To a country like Austria, which was small, land-locked and technologically developed, the Authority offered four advantages. First, it was through international co-operation that Austria hoped to share in the benefits from the uses of ocean space from which its geographical situation, reinforced by the policies adopted by the Conference, had practically excluded it. Secondly, since technology was one of its major resources, Austria might be able, through active co-operation with the Authority, to develop that resource and benefit more greatly from it. Thirdly,

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participation in the exploitation of the mineral resources of the Area would contribute to an assured supply for Austria's industries. Fourthly, the Authority could offer Austria new ways to implement the goals of its international development policy of north-south co-operation. Such were the interests and hopes of Austria. But like many other delegations, his delegation was disappointed by the compromise that had been reached. The composition of the Council was such that a country like Austria had little hope of participating actively in the conduct of the Authority's affairs. The voting procedures might paralyse the activities of the Council and did not seem to be designed as an instrument of executive and managerial efficiency. The provisions for the financing of the Enterprise were such as to discourage ratification of the convention. However, the new text of annex IV, article 11, paragraph 3 (*d*), reflected Austria's views better than the former text.

43. Turning to the questions allocated to the Second Committee, he again stressed that his delegation did not see any need to confine the rights set out in article 69, paragraph 3, to developing countries, since they had their origin in the establishment of the exclusive economic zone, in respect of which no distinction had been made between developing and developed coastal States. Furthermore, the text relating to the continental shelf extended that part of the sea-bed over which coastal States enjoyed exclusive rights of exploration and exploitation to the detriment of the international community as a whole. In order to establish a certain balance in that legal régime, his delegation supported the idea of increasing the figures in article 82 and the proposal to establish a common heritage fund as compensation for the benefits derived by certain States from the use of that part of the sea. As for participation in the exploitation of natural resources, his delegation had already proposed a draft resolution on the continental shelf, the full text of which would appear in its written statement (A/CONF.62/WS.10). The draft resolution took account of the fact that the concept of natural prolongation must be applied to the continent as a whole. It thus seemed justified and equitable to safeguard, in the exploitation of such resources, the interests of States without a continental shelf or with only a limited continental shelf.

44. His delegation's comments on the questions dealt with by the Third Committee would appear in its written statement.

45. Attention should now be focused on the Preparatory Commission, whose role was still ill-defined, and on the practical implementation of the provisional measures.

46. Mr. STARCEVIĆ (United Nations Council for Namibia) said that the Council's position as the legal administering authority of Namibia was dictated both by the present and future status of Namibia and by the geographical characteristics of that country. All legislative measures adopted by South Africa, in particular the extension of the limit of Namibia's territorial sea to 12 nautical miles and the proclamation of an exclusive economic zone of 200 nautical miles, were illegal, null and void, the Council alone had the right to adopt decisions applicable to Namibia. Similarly, the decision of South Africa to annex Walvis Bay and the surrounding areas was illegal, null and void. Once Namibia achieved independence, it would wish, as a developing country, to receive its share of the benefits from the exploitation of the common heritage of mankind and, as a coastal State, to ensure that the interests of its people were protected by the implementation of the future convention.

47. After examining the proposal of the co-ordinators of the working group of 21, considered by some to be a breakthrough, his delegation believed that the developing countries had no reason to rejoice at the result, which had been achieved to their detriment and under pressure of time, the desire to have a convention at any price, threats of unilateral action, etc. Wherever the word "Authority" had been used in the second revision, the assumption had been that the most important powers and functions would be assigned to the Assembly. In the co-ordinators' proposals, however, the "Authority" had invariably become the "Council", an organ of limited membership and complicated structure, whereas all States parties would be represented in the Assembly. The system for adopting decisions followed the same pattern: decisions on questions of most concern to developing countries would be taken by consensus, with the result that there was a possibility of veto, or would have to comply with requirements which were difficult to satisfy; on the other hand, the approval of plans of work, which mainly concerned the industrialized countries, was very simplified. Furthermore, the requirement of the highest standard of competence for members of the Commissions was not designed to promote candidates from the developing countries. In that connexion, his delegation considered unacceptable the provision under which the Council must reach a consensus in order to recommend to the Assembly the rules, regulations and procedures applicable to the equitable sharing of benefits derived from activities in the Area pursuant to article 82. The provisions under which particular consideration was to be given to the interests and needs of the developing countries which had not yet acceded to independence would remain a dead letter if the refusal of only one member of the Council was sufficient for the Assembly to receive no recommendation in that regard. If that situation arose, the Assembly would probably act on its own to protect the interests of territories under foreign occupation, like Namibia. Those were the reasons why delegations should study the co-ordinators' proposal most carefully before accepting it, even on a provisional basis.

48. Since his delegation had started participating in the Conference only recently, it would address itself only to those items considered by the Second Committee which had a direct bearing on Namibia. In that respect, it attached the utmost importance to all the provisions relating to areas of national jurisdiction, in particular the provisions defining such areas and clearly establishing the rights of coastal States. It supported the outcome of the negotiations on the territorial sea, the exclusive economic zone and the continental shelf which protected Namibia's interests and those of third States. It attached particular importance to articles 2, 3, 10, 55, 56, 58, 61, 62, 76 and 77. The exploitation of living and non-living resources in the areas which would be under Namibia's jurisdiction was of vital importance to the people of Namibia, the only people entitled to derive benefit from those areas. His delegation also supported the compromise formulas worked out by negotiating group 4 concerning the access of land-locked and other geographically disadvantaged States to the living resources of the exclusive economic zone and the formulas concerning the right of access of land-locked States to and from the sea and freedom of transit. It hoped that a satisfactory solution would be found to the problem of delimitation, the only outstanding problem in the Second Committee.

49. On the whole, the provisions worked out by the Third Committee were acceptable to his delegation, which hoped that the rights and authority of coastal States would not be curtailed in any way.

50. Lastly, in respect of the final clauses, it was imperative that countries which had not acceded to independence in accordance with General Assembly resolution 1514 (XV) and liberation movements recognized by the United Nations and the regional organizations should be allowed to accede to the convention. His delegation hoped that the formula on accession being worked out by the Group of 77 would be incorporated in the final clauses.

51. Mr. ANDERSEN (Iceland) said his delegation realized that some issues would have to be deferred until the next session, that intersessional meetings would have to be held on the question of the preparatory commission and that the Drafting Committee would have to continue its work. Nevertheless, the Conference had concluded its substantive negotiations and its goal, the drafting of a comprehensive convention on the law of the sea, was in sight. His delegation considered that the third revision should incorporate the achievements of the current session on the general provisions and dispute settlement, and the results obtained in the three main committees. Questions already resolved should not be reopened and care must be taken not to jeopardize the delicate balance of the package solution. Therefore, no reservations

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should be permitted, unless specifically authorized in the articles themselves.

52. The question of the delimitation of the areas between States with opposite or adjacent coasts had given rise to prolonged discussion: the supporters of the principle of equity and the supporters of the principle of the equidistance line had not been able to agree on a proposal for changing the terms of articles 74 and 83. In the opinion of his delegation, delimitation should be effected through agreement between the States concerned, the aim always being to achieve an equitable solution. However, so many factors were involved that all that could be said was that sometimes the equidistance line led to an equitable solution. If it did not, account must be taken of the relevant factors, including special circumstances. The solution must always be equitable and all methods, including the equidistance line, could be used to achieve that goal. In his delegation's view, the current wording of articles 74 and 83 satisfied that requirement.

53. His delegation hoped that all delegations would go to the next session with the firm intention of concluding the work of the Conference, so that the long-awaited Caracas session could be held in the summer of 1981.

54. Mr. SPÁČIL (Czechoslovakia) observed that when the decision had been taken to codify the law of the sea, no one had realized the complexity of the task. In fact, after several sessions, the Conference had over 300 draft articles and texts of annexes before it. Those documents took account of the reality of the present-day world, the interests of geographical groups, developed and developing countries, consumers and producers, coastal States and land-locked or geographically disadvantaged States, and the existence of different social and political systems. The combined efforts of all had made it possible to achieve positive results. Naturally, his delegation would have liked a different wording for certain provisions which would appear in the third revision, including, of course, the provisions relating to the rights of land-locked and other geographically disadvantaged States. In general, it considered that an acceptable solution had been found by the First Committee to the questions allotted to it, but it would have preferred the institution of more specific guarantees against State monopoly with regard to the utilization of resources. The proposed methods of financing did not give countries like Czechoslovakia benefits consonant with their contractual commitments. Furthermore, his delegation would have liked the Council to adopt all its decisions by a three-fourths majority, but it recognized that every State, and every group of States, had had to make its contribution to the text occasionally by forgoing insistence on certain interests in order to arrive at a balanced compromise.

55. It noted with concern that certain delegations were challenging the results of the work on basic questions such as the régime of territorial waters, the exclusive economic zone, and even the establishment and composition of the Council. Any attempt to reopen the discussion on the composition of the Council, for example, if only through the addition of a foot-note, would jeopardize all the results achieved. Attention should rather be focused on the outstanding issues. The work of the Conference was proof of the validity of the concepts of détente and peaceful coexistence. Moreover, the fact that the Conference had taken into account the legitimate requirements of developing countries did it credit.

56. Since the basic problems had been settled, delegations should now unite their efforts to adopt the convention by consensus.

57. Mr. ORREGO VICUÑA (Chile) paid tribute to Mr. Gonzalez Videla, the sponsor of the 1947 proclamation on the 200-nautical-mile zone and former President of Chile, who had just died. That proclamation, the first in the world, had led in 1952 to the Santiago Declaration on the Maritime Zone of the South Pacific countries, which at present united Chile, Colombia, Ecuador and Peru. That had been the starting-point for the process of updating the law of the sea, a process which was crowned by the present Conference.

58. As to the delimitation of the exclusive economic zone and the continental shelf and related matters, his delegation considered that the Conference was examining a whole series of closely-linked questions, as explicitly acknowledged in the agreements on procedure which were guiding the work of the Conference. The provisions compiled in that connexion in the second revision of the negotiating text offered an adequate basis for reaching consensus. His delegation therefore reiterated its support for those compromise formulas, which should be preserved in their entirety in the absence of more satisfactory solutions.

59. Chile, however, had some difficulty with the provisions on the settlement of disputes, which were ineffective and comprised a whole series of exceptions that would make them practically inoperative. As talks on that whole question were continuing, his delegation would do its utmost to ensure that the issues relating to the settlement of disputes were re-examined. Chile had actively participated in the direct consultations among the groups concerned and if, as a result of those consultations, the various delegations agreed on more satisfactory texts likely to lead to a consensus, his delegation would not press for the re-examination of the other provisions in the negotiating package.

60. Thus, while his delegation considered as acceptable the proposals made by the President for the rearrangement of the provisions on the settlement of disputes, it was clearly understood that that rearrangement did not mean that his delegation accepted the consolidation of the substantive texts, such as articles 298 and 298 *bis*, which were being negotiated as part of a package on which a final consensus had not yet been reached.

61. His delegation supported the President's report on final clauses, and, with regard to the reservations and exceptions, it recognized the principle that, in a convention negotiated by consensus, only those reservations expressly provided for in the articles themselves could be accepted. With that in mind, it considered that the relevant provision had been sufficiently debated and that consensus had already been achieved on it.

62. As to the general provisions, in particular the proposal concerning *jus cogens* submitted by his delegation with the general support of the developing countries and other countries (see A/CONF.62/L.58), his delegation considered that the compromise which had been reached on article 305, paragraph 6, incorporated some of the essential elements of the question, in particular the prohibition to make any change whatsoever in the concept of the common heritage of mankind or to conclude agreements contrary to that principle, although it would have preferred more categorical language. It stressed that the negotiated text in no way affected the status accorded to *jus cogens* provisions in customary law and that that text took note of their existence.

63. Referring to the negotiations in the First Committee, he said that with the conclusion of the negotiations on the limitation of production, one of the basic issues of the convention had been resolved, an issue to which Chile, as a country which exported copper and other ores found in the Area, attached particular importance. The search for a solution to the problems of the adverse effects of sea-bed mining on producer countries dated back to the first session of the Conference. Although the results obtained in that field were not altogether satisfactory, they were acceptable to the great majority of the countries concerned, as had been shown by the discussions within the regional groups and the Group of 77. The scheme proposed, which was based on market growth and included a safeguard clause in the event of low growth, was the outcome of the consensus that had been sought for so long. That mechanism must be supplemented by appropriate measures for the cobalt-producing countries, which would be seriously affected by the exploitation of the Area. When the compensation system came to be worked out, priority would have to be given to the study of mechanisms for adequately protecting those countries.

64. The ninth session of the Conference was ending with another important result: the development of the voting system for decision-making by the Council. The essentially non-discriminatory nature of the system and the distinction made be-

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tween the various questions to be decided were new elements which would play a major role in the activities of the Authority and would constitute an interesting precedent for future negotiations between industrialized and developing countries, negotiations which had often failed because there had been no agreement on the decision-making machinery. His delegation would have preferred a different solution but considered that the solution that had been devised was sufficiently realistic to be accepted.

65. The negotiations on the transfer of technology and the means of financing the Enterprise had been completed through compromise solutions which also seemed realistic, although his delegation would again have preferred different solutions.

66. The progress achieved at the current session should not be allowed to overshadow the serious difficulties which were yet to be overcome, in particular those relating to participation, investment protection and the establishment and nature of the Preparatory Commission. His delegation hoped that all delegations would be able to participate, without restriction, in the deliberations on those issues.

67. The PRESIDENT in turn paid tribute to Mr. Gonzalez Videla, the former President of Chile, whose initiatives had set a deep imprint on the history of the law of the sea.

68. Mr. HAYES (Ireland) said that an achievement of the Conference that would have beneficial effects for the society of nations far beyond the reaches of the law of the sea would be the establishment of the régime for the international sea-bed Area beyond the limits of national jurisdiction and the setting-up of the International Sea-Bed Authority to control and administer the exploitation of the resources of that Area. He considered that the texts before the Conference represented agreements in which the interests of all sides were reconciled and that they would lead to consensus. Nevertheless, the sacrifices made by some delegations for the sake of that package should not be underestimated.

69. In the areas covered by the mandates of the Second and Third Committees, the great majority of issues had been resolved, and his delegation could endorse all the formulas adopted—on the territorial sea, the exclusive economic zone, the continental shelf, the high seas, the protection of the marine environment and marine scientific research—with the exception of the provisions on the delimitation of the maritime areas between States with opposite or adjacent coasts. In the general debate at the end of the first part of the current session, his delegation had agreed that the texts on the limits of national jurisdiction over the continental shelf and on marine scientific research on the continental shelf beyond 200 nautical miles should be included in the revised text, and that had subsequently been done on the basis of the opinions expressed in that debate. It thus expected that those texts would provide the compromise on the basis of which those issues would be solved by consensus.

70. However, it could not accept the present text of the provisions concerning the delimitation of maritime areas between States with adjacent or opposite coasts, in other words, the paragraph 1 of articles 74 and 83. On that point he spoke not only for his own delegation, but also for the other delegations which had sponsored document NG 7/10/Rev.2. The negotiations had failed on that question, probably because they had got off to a slow start. In the general debate at the first part of the session, the delegations for which he spoke had rejected as a basis for negotiation the text on criteria mentioned in the report of the Chairman of negotiating group 7 (A/CONF.62/L.47)[1] and had drawn attention to the fact that, on the contrary, both interest groups had largely accepted the text in the first revision of the negotiating text as a basis for negotiation. They failed to understand how it had been decided that a text rejected by the largest group of States with a direct interest in the issue could be regarded as receiving widespread support and offering better prospects of consensus. The text had not only proved to be an ineffective basis for a compromise, but its very existence had been, for supporters of the revision, a disincentive to negotiations. The delegations for which he was speaking believed that the exchanges of views at that session had shown the way towards a consensus on that issue. Unfortunately, there was as yet no agreed text which embodied that development, but he hoped that the progress made would not be lost. Thus the third revision of the text must acknowledge that the prospects for consensus on that issue had their basis elsewhere than in the formulation in the second revision.

71. Lastly, his delegation drew attention to the need to ensure the participation of the European Communities in the future convention and, in that respect, it fully supported the statement made by the delegation of the Netherlands.

72. Mr. CHOUAKI (Algeria), referring to the proposals contained in document A/CONF.62/C.1/L.28/Add.1, said that his delegation would not endorse the new solutions advocated in article 161, paragraph 7, unless the mechanism and the scope of the consensus set up in that text proved to be non-detrimental to the interests of the developing countries. Article 161, paragraph 7 (*d*), implied that only three types of question would be decided by consensus. However, paragraph 7 (*f*) and (*g*), and article 162, paragraph 2 (*j*) and (*n*), extended the scope of consensus and there was a danger that the use of that procedure might overreach the limits within which it was meant to be contained. The decision-making procedure envisaged in the compromise document retained the two-thirds majority only for a few minor questions, the most important questions being decided by a three-fourths majority or by consensus. The future of the Authority and the role of the developing countries in the decision-making process were thus being seriously jeopardized, since consensus was a form of veto in disguise, which had been rejected by the Organization of African Unity at its conference in Freetown in June 1980 (see A/CONF.62/104). In any event, that system could certainly not be invoked as a precedent, because it represented a retrograde step vis-à-vis the system of decision-making in the international organizations of the United Nations system and ran counter to the democratic requirements of the new international order. However, article 162, paragraph 2 (*j*), concerning the approval of plans of work, tended to establish practically automatic access for a few States and their entities to the exploitation of the resources of the common heritage of mankind. That kind of provision opened the way for the more intensive exploitation of sea-bed resources in a manner seriously detrimental to the interests of land-based developing-country producers.

73. In another context, the protection of the interests of the developing countries required that the adoption of the parallel system, as opposed to the unitary system advocated by the developing countries, should be accompanied by the effective, specific and complete transfer of technology, covering all phases of the development of resources: exploration, exploitation, transport and processing. However, the compromise had not really taken that element into account, with the result that there was a disturbing imbalance for all the developing countries.

74. The fact that the moratorium provided for under article 155 of document A/CONF.62/W.P.10/Rev.1 was called in question by the text before the Conference caused his delegation some concern, because that text distorted the compromise that had been adopted when the Group of 77 had agreed to negotiate on the basis of the system of parallel exploitation. The Conference should therefore revert to the text in the first revision. Apart from those fundamental problems, the compromise proposed in document A/CONF.62/C.1/L.28/Add.1 would not be balanced if some provisions were not improved. Thus, in article 150 and article 151, paragraph 2 (*b*), the mechanisms provided for were in no way sufficient to protect the earnings and interests of the developing countries, in particular when they were producers of minerals obtained from the Area. Article 163, paragraph 10, was not satisfactory and the specific majorities required for decisions on various questions within the Commission should be spelt out. On that question, his delegation hoped that article 163, paragraph 10, of the second revision of the negotiating text would be retained. Article 162, paragraph 2 (*a*), introduced a dangerous ambiguity into the relations between the Council and the Assembly. The Assembly, the supreme organ of the Authority, must retain all its prerogatives, without any encroachment by the Council.

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The expression "invite the attention of the Assembly to cases of non-compliance" could be interpreted as an attempt to control the activities of the Assembly and to limit its prerogatives. As to annex III, article 5, paragraph 3, the slight improvement made in the compromise text was a long way from meeting the expectations of the developing countries. Annex IV, article 11, paragraph 3, should be amended to enable the Enterprise to avail itself of financial means which would allow it to act at least as quickly as private or State entities.

75. With regard to the problems taken up by the Second Committee, his delegation attached great importance to the question of the delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts. The success of the Conference would be diminished if that problem remained unsolved. On that point there were several arguments in favour of a third revision of the text: they included reasons of form, since the procedure used for the second revision was contrary to the decision embodied in document A/CONF.62/62,[2] as many delegations had pointed out, and reasons of substance, since that irregular revision might lead to ambiguities concerning the criteria for delimitation. Consequently, the new formula did not improve the chances of reaching a consensus. The reference to international law in the first sentence of the provisions on delimitation could have been placed in a context which would remove all ambiguity and would have been in conformity with international jurisprudence on that point. In any event, that reference could be interpreted only as confirming the pre-eminent role of equitable principles. Furthermore, on the question of delimitation, international law had already established the concept of "relevant factors" in addition to the principle of equity. His delegation, in requesting a return to that concept, provided for in the first revision of the negotiating text, was merely taking into account international jurisprudence, which the Conference could not ignore.

76. The Conference had considered the question of islands as one of the most important and most controversial. It was still important and controversial because article 121, paragraph 2, had not been amended, even though many delegations had requested an amendment. The granting of an economic zone to islands belonging to mainland States in semi-enclosed seas or in narrow maritime areas led to imbalances which were unacceptable to some coastal States. The recognition of the right of islands to have an economic zone should necessarily be accompanied by a recognition of the interests of other States and hence of measures which would safeguard the rights of those States.

77. His delegation could not endorse the present wording of article 76 on the breadth of the continental shelf. Together with the Arab group and other delegations, his delegation had challenged the corresponding provisions in the first and second revisions of the negotiating text. Those provisions had introduced the strange notion of a continental margin, which resulted in a substantial reduction in the size of the common heritage of mankind for the benefit of a small minority of States. That action was contrary to the preamble of the future convention, in accordance with which the States parties would call for "the equitable and efficient utilization" of the resources of the seas and oceans, and "the realization of a just and equitable international economic order".

78. His delegation urged the Conference to condemn any unilateral measure or proposed legislation designed to promote in any way whatsoever the exploitation of the common heritage of mankind, and pressed for the full participation of national liberation movements in the drafting of the future convention. It hoped that the third revision would reflect the deliberations of the Conference in order that the text might be improved and that the Conference might devise a convention whose provisions would replace those of the Geneva Conventions.

79. The PRESIDENT regretted that the representative of Algeria had criticized the initiatives of the Collegium. Such comments might have serious consequences for the Conference.

80. Mr. CHOUAKI (Algeria) said that it had never been his intention to engage in polemics. His delegation was simply interpreting a procedural point, without challenging any individual or any authority.

81. Mr. POWELL-JONES (United Kingdom) noted that the progress during the second part of the ninth session had been achieved mainly by the First Committee in respect of the negotiation of the deep-sea mining régime and by the informal plenary Conference in respect of the final clauses and general provisions. The solution proposed for the problem of decision-making in the Council should, if adopted, make a significant contribution to the success of the Conference and restore its credibility with Governments and public opinion.

82. The work done by the informal plenary Conference on the final clauses had brought that part of the convention to the level of the main chapters. The wording proposed for article 303 on reservations (see A/CONF.62/L.60) was acceptable, on the assumption that the convention was adopted by consensus. However, his delegation was not satisfied with article 302, paragraph 3, which provided that the convention might enter into force with an initial composition for the Council that was not fully consistent with article 161. The complicated question of amendments had been treated satisfactorily in the new text of article 306, which established a measure of flexibility while retaining the necessary balance within the convention. With regard to the question of participation in the convention, his delegation supported the statement by the Netherlands in favour of accession by the European Economic Community. It was essential to avoid disturbing the balance that had been achieved with much difficulty in the final clauses.

83. The general provisions presented difficult issues. Although his delegation did not always endorse the solutions proposed for some provisions (see A/CONF.62/L.58), it was prepared to accept them in a spirit of compromise. The text arising out of the discussion on *jus cogens* was acceptable, as were the proposals for the settlement of disputes. His delegation hoped that those texts would be incorporated in the third revision of the negotiating text. With regard to the delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts, the text proposed for articles 74 and 83 was a good basis for consensus and should enable agreement to be reached.

84. All the proposals made by the First Committee, as set out in document A/CONF.62/C.1/L.28/Add.1, should be incorporated in the third revision. His delegation was in favour of the voting procedure in the Council proposed in article 161, paragraph 7, and article 162, paragraph 2 (*j*). However, article 162, paragraph 1, should be included in the list of questions to be decided by consensus. In his delegation's opinion, it would be difficult to revert to the matter of the composition of the Council, as some delegations had suggested, without upsetting the balance obtained in respect of voting procedures.

85. The question of the development of the resources of the Area had been one of the most difficult before the Conference. While the new article 150, subparagraph (*h*), concerning the development of the common heritage, was satisfactory, the provisions of article 151, paragraph 2, were less so. His delegation could not accept provisions more restrictive than those now contained in the text of the article. It continued to have reservations about annex III, article 5, paragraph 3 (*e*), concerning the transfer of technology. The question of the settlement of disputes might usefully be given further consideration. Although his delegation regretted that the three minor improvements it had proposed in annex III, article 13, on financial terms of contracts, had been rejected, it could accept the existing text in a spirit of compromise. It welcomed the new text proposed for annex IV, article 11, on the financing of the Enterprise, but in view of the United Kingdom's very high contribution to that project, his Government reserved its position pending a full evaluation. On the question of the lawfulness of deep-sea mining legislation, his delegation's position was well known.

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

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86. Although the texts proposed by the Second Committee (see A/CONF.62/L.51) were generally balanced, his Government remained opposed to the change made in article 76, paragraph 8, on the commission on the limits of the continental shelf, as a result of which the words "on the basis of" had replaced "taking into account". It also had reservations with regard to article 121, paragraph 3, on the régime of islands, since it objected to any arbitrary distinction between the parts of the territory of the coastal State. The existing text of article 60, paragraph 3, on the removal of installations in the exclusive economic zone, should be improved. A number of proposals made at the current session on other articles within the purview of the Second Committee were not supported by his delegation, which opposed in particular the amendment proposed to article 21. To empower the coastal State to institute regulations requiring prior notification or authorization of the passage of warships through the territorial sea was inconsistent with existing international law and unacceptable to the United Kingdom.

87. The texts proposed for Parts XII, XIII and XIV by the Third Committee (A/CONF.62/C.3/L.34 and Add.1 and 2) following lengthy negotiations were generally acceptable, as were the suggested drafting amendments. Some other changes of a drafting nature might be necessary at a later stage.

88. Since the new texts proposed were supported by a wide area of consensus, his delegation considered that they should be incorporated in the third revision. The Conference would have to hold another session in order to complete its work on participation, preliminary investment protection and the preparatory commission. If its work was to be completed in 1981, however, what had already been agreed on must not be called in question.

89. Mr. MHLANGA (Zambia) said that in principle the Conference had a mandate to provide for the exercise of the freedoms of the high seas and to ensure respect for the principle of the common heritage of mankind, proclaimed in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV)). His delegation therefore opposed all proposals that were inconsistent with that principle, including some which were reflected in the informal composite negotiating text. It also protested against any unilateral claim or legislation contrary to the concept of the common heritage of mankind.

90. With regard to the work of the informal plenary Conference, article 286 on the dispute settlement was not satisfactory in that it was subject to the provisions of other articles of Part XV, section 3, which provided for limitations and exceptions. As a result, a coastal State would not have any obligation to submit to a compulsory settlement of disputes in matters relating to economic zones, which should be the subject of further negotiation.

91. Referring to matters before the First Committee, he hoped that the proposals contained in the note transmitted the previous day by his delegation and the delegations of Burundi, Gabon, Lesotho, Uganda, Zaire and Zimbabwe would be taken into consideration in the third revision and circulated to all delegations. It seemed abnormal, in the voting procedure within the Council as proposed in document A/CONF.62/C.1/L.28/Add.1, to separate, in article 162, paragraph 2 (*m*) from paragraph 2 (*l*); the provisions of both subparagraphs were related and should be incorporated in article 161, paragraph 7 (*b*).

92. It was regrettable that the moratorium clause should have been deleted from article 155 on the review conference. That clause, together with satisfactory provisions relating to the transfer of technology, had been among the conditions laid down by the Group of 77 when it had accepted the so-called parallel system of exploiting the resources of the Area. The provisions relating to the transfer of technology should enable the Enterprise and all countries, whether developing or not, to begin exploitation of the Area at the same time. With regard to the production policies set forth in article 151, his Government would like to amend the new text proposed by the First Committee by adding, at the end of paragraph 2 (*b*) (iii), the words "only if the growth rate is less than 3 per cent". At the end of subparagraph (iv), it would be preferable to replace the words "for any year" by "for the year of commercial production". Continuing in the same subparagraph, the words "70 per cent of" should be inserted between the word "exceed" and the words "the difference". The production formula should be improved to make it more responsive to practical situations. The provisions of article 150, subparagraph (*i*), relating to market access conditions and the provisions on compensation should also be improved.

93. With regard to the work of the Second Committee, his delegation regretted that little progress had been made in respect of direct negotiations between coastal States and land-locked and geographically disadvantaged States. That was all the more regrettable since some of the outstanding issues held the key to a satisfactory conclusion of the Conference. Those issues included the delimitation of the continental shelf and the exclusive economic zone, which should be regional in character, and the right of free access to and from the sea. That right should be established securely instead of being subject to the conclusion of bilateral agreements or other requirements which had the effect of negating its existence.

94. It would also be recalled that in document A/AC.138/87 the Secretary-General had noted that the bulk of the natural resources of the sea were close to coasts. He had mentioned, for instance, that if the limits of national jurisdiction were to be set at 200 nautical miles, 87 per cent of hydrocarbons would belong to coastal States alone and only 13 per cent would remain as the common heritage of mankind. If the limits were set at 40 nautical miles, coastal States would still have 41 per cent of hydrocarbon resources. That explained why the land-locked and geographically disadvantaged States would find it difficult to support a proposal to legitimize unilateral claims for the extension of national jurisdiction to 200 nautical miles or even beyond. Customary international law set the limit at 3 nautical miles and conventional international law might permit 12 nautical miles.

95. With regard to the questions before the Third Committee, account should, in his opinion, be taken of the solutions proposed for certain matters before the Second Committee.

96. His delegation welcomed the fact that the idea of the common heritage of mankind had been incorporated in article 140 of the second revision of the negotiating text. It would have been preferable, however, to strengthen paragraph 2 of that article by adding a sentence on the establishment of the common heritage fund. His delegation remained prepared to participate in negotiations on all those matters in order to promote the successful conclusion of the Conference.

Mr. Tshikala Kakwaka (Zaire), Vice-President, took the Chair.

97. Mr. OSMAN HOUFFANE (Djibouti) said that the Conference seemed to be approaching the vital goal it had set itself. However, there were still some outstanding problems, in particular with regard to interim investment, the Preparatory Commission and membership of the Council. But on the whole, the results achieved by the main committees and in the negotiating groups at the current session had been encouraging. The Conference had still to find an equitable formula for the delimitation of the continental shelf and exclusive economic zone. With regard to decision-making and voting in the Council, Djibouti joined the consensus which had emerged. Like the member countries of the Arab group, Djibouti supported the accession to the convention of peoples under foreign occupation and liberation movements recognized by the United Nations and intergovernmental regional organizations, in accordance with the wish expressed by the heads of State and Governments at the Organization of African Unity Conference in Freetown, in June 1980.

98. Mr. CHIRWA (Malawi) said that the Conference was involved not merely in the codification of the existing international law relating to the oceans and the use of ocean resources, but also in the progressive development of that law. In order to achieve that, changes were bound to be made to the law enunciated in the numerous existing conventions. It was therefore desirable that the Conference should adopt a convention which made

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fair provision for the interests of all groups of countries, including the developing countries, and especially the land-locked and geographically disadvantaged among them.

99. His delegation supported in principle the proposals contained in the second revision of the negotiating text, although some elements were not completely satisfactory. The right of access to and from the sea and freedom of transit, which were the subject of Part X, were of vital importance to land-locked countries, especially those which were developing countries, which must be certain that their goods would be afforded transit. Malawi therefore hoped that the Conference would not be insensitive to the special needs of such countries in considering those provisions. Whatever the final decision of the Conference, the right of access should be enunciated as a right and not as a mere recommendation, the article on the exclusion of application of the most-favoured-nation clause should be maintained, the types of means of transport provided for in the text should not be reduced and the article relating to the granting of greater transit facilities should be maintained.

100. His delegation, like many other delegations of land-locked States, was not satisfied with the provisions of Part V relating to the participation of such States in the exploitation of the living resources of the exclusive economic zones. More facilities should be accorded to the land-locked States. In accordance with the present text, the coastal State had the right to determine the allowable catch of the living resources of the exclusive economic zone, to determine its own capacity to harvest them, to determine whether it had the capacity to harvest the entire allowable catch, and consequently to declare a surplus which the land-locked States and the geographically disadvantaged States must share equitably. Those provisions, which were still very favourable to coastal States, should be reconsidered.

101. His delegation endorsed the principle that the Area and its resources were the common heritage of mankind. It therefore hoped that the Conference would take due account of that principle when it came to adopt Part XI of the negotiating text, so that no provision which directly or indirectly derogated from that principle was accepted or incorporated in the text. The work of the current session on revenue-sharing, decision-making procedures in the Council, the transfer of technology and the financing of the Enterprise was encouraging. However, the provisions relating to the compensation of developing land-based mineral producers should be improved by stipulating, in article 151, paragraph 4, that a system of compensation and other economic adjustment measures should be established as complementary measures and not, as at present provided for, in the form of alternatives.

102. Mr. VARVESI (Italy), referring to the work of the First Committee, said that his delegation welcomed the idea of introducing into article 150 a new paragraph stating that the exploitation of the resources of the sea-bed in the interests of mankind as a whole was one of the major reasons for setting up the Authority. Nevertheless, the wording of subparagraph (*d*) of that article constituted a formidable obstacle to the development of the common heritage. As for the limitation of production provided for in article 151, his delegation had always sought to avoid provisions that might harm the interests of industrialized or developing consumer States. With the limits at present stipulated, that danger existed, since they might impede the sea-bed mining industry. With regard to the composition and voting procedure of the Council, article 161, paragraph 7, provided the makings of a solution. Nevertheless, a wider use of consensus, particularly for approval of the Authority's budget, would have been desirable. Clarification was also required in the wording of paragraph 2 (*c*) from which it was apparent that some other aspects of the provisions relating to the representation of interest groups on the Council were in need of improvement. It would seem that annex III, article 13, relating to the financial terms of contracts, might discourage, rather than encourage, the development of ocean resources. The principle of consensus for questions relating to possible shortfalls in funds to cover the initial financing of the Enterprise was satisfactory, but the total sum that the States concerned would be called upon to contribute should be fixed.

103. The provisions of the negotiating text dealt with in the Second Committee were on the whole satisfactory, particularly with regard to freedom of navigation on the high seas and in the economic zones, the right of transit passage through straits and the innocent passage of all ships in territorial seas. The proposed provisions on the settlement of disputes on those subjects constituted an essential supplementary safeguard. His delegation could accept, albeit with some difficulty, articles 74 and 83 relating to delimitation. It hoped that a satisfactory solution could be found on that question.

104. The Third Committee had also made good progress, although it had been concerned only with drafting problems. With regard to the general provisions, his delegation welcomed the inclusion of a provision on archaeological objects, since it had long stressed the importance of that matter. The wording of the other general provisions, particularly regarding the principle of the common heritage of mankind and the use of the seas for peaceful purposes, did not affect the general principles of existing international law.

105. The final clauses proposed in documents FC/21/Rev.1 and Add.1 seemed generally acceptable. The provision enunciating the principle of the inadmissibility of reservations was important and was linked with the prospect of adopting the convention by consensus. It would be desirable for amendments relating to activities in the Area to be approved both by the Council and by the Assembly, but it seemed difficult to accept that the representatives of States in both those organs should be plenipotentiaries in the formal sense of the term. The simplified amendment procedure appeared to be very useful and the provisions regarding the entry into force of amendments appeared to safeguard the stability of the rules laid down by the convention.

106. His delegation was anxious to see included in the convention a clause which would enable the European Economic Community to accede to it, as the Netherlands representative had requested. The suggestions of the Drafting Committee would have to be taken into account in all language versions when the third revision of the negotiating text was being prepared.

107. Mr. YANKOV (Bulgaria) said that with the breakthrough on matters relating to the régime for the exploration and exploitation of the sea-bed beyond national jurisdiction, including its institutional aspects, and on other outstanding questions, the Conference had reached a turning-point. The main components of the convention had already taken shape in the form of compromise formulas which would be reflected in the forthcoming revision of the negotiating text. The Conference had therefore accomplished its threefold function as a negotiating forum, a preparatory codification body for the preparation of draft articles and a universal diplomatic conference for the adoption of a new comprehensive convention on the law of the sea.

108. His delegation noted with particular satisfaction the provisions relating to the freedom of navigation on the high seas and the right of transit passage through straits. It also welcomed the adoption of 12 nautical miles as a universal norm for the breadth of the territorial sea, and the agreement on a viable régime of the territorial sea and on the innocent passage of ships through the territorial sea and in archipelagic waters. It would oppose any attempt to renegotiate the provisions relating to the status of the territorial sea, in particular, article 21. The provisions relating to archipelagic waters, the régime of islands, enclosed and semi-enclosed seas, and the continental shelf were also satisfactory, even though it would have been better to fix the outer limits of the continental shelf at 200 nautical miles, as for the exclusive economic zone. His delegation also supported the adoption of the fundamental principle that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction and the resources therein contained were the common heritage of mankind.

109. The provisions of the negotiating text relating to the ex-

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clusive economic zone were compromise formulas based on the package-deal approach. But such compromise solutions were viable only if justice was done to the legitimate claims of the States concerned, particularly with regard to access to living resources. Bulgaria was a small country with a coastline bordering an enclosed sea extremely poor in fish stocks; it had had to make substantial investments in recent years in order to build up a long-distance fishing industry. He therefore regretted that in their present form, articles 62 and 70 did not adequately take into consideration the concerns of geographically disadvantaged countries such as his own.

110. With regard to Part XI of the negotiating text, the First Committee had found a compromise solution on key issues such as the composition and voting procedure of the Council, the system of exploration and exploitation, production policy, the financing and statute of the Enterprise, and other related matters. Bulgaria could accept those proposals, in particular in the light of the position taken by the Group of 77. Since the composition and voting procedures of the Council had been negotiated as integral parts of an important institutional problem, it could accept the three-tier principle of decision-making, namely, consensus, three-fourths majority and two-thirds majority—for the questions listed in the new text. There could be no question of reconsidering a compromise formula achieved after difficult negotiations.

111. The work accomplished on the general provisions, the settlement of disputes and the final clauses was satisfactory. The new provisions proposed for the settlement of disputes constituted a comprehensive system covering all types of disputes within the terms of reference of the convention, including those arising from the delimitation of maritime areas. With regard to the final clauses, it was to be hoped that a compromise solution would be found for the problem of reservations to the convention. As Bulgaria attached much importance to the problem of the protection of archaeological and historical objects, it supported document A/CONF.62/GP/11, which met that point.

112. With regard to the issues within the terms of reference of the Second Committee, there was no reason to change the provisions set out in the second revision of the negotiating text. It was to be hoped that a compromise solution would be found regarding the delimitation of maritime areas. A multilateral convention on the law of the sea should lay down viable general principles and should not try to settle specific bilateral issues which might arise in that respect. The negotiations on Parts XII, XIII and XIV of the text had been completed and the second revision, with the various changes made at the current session, offered good prospects for the adoption of a comprehensive convention by consensus.

The meeting rose at 6.30 p.m.

138th meeting

Tuesday, 26 August 1980, at 8.05 p.m.

President: Mr. H. S. AMERASINGHE

In the absence of the President, Mr. Orrego Vicuña (Chile), Vice-President, took the Chair.

General debate (*continued*)

1. Mr. TEMPLETON (New Zealand) said that, by reaching a broad measure of agreement on the remaining unresolved issues within the competence of the First Committee, the Conference had virtually completed the long process of negotiation on the substantive issues involved in the conclusion of a comprehensive convention on the law of the sea. Two questions which remained to be resolved were that of delimitation and that of participation, agreement on the latter being essential in order to complete the chapter containing the final clauses.

2. His delegation paid unreserved tribute to all those who had worked to resolve the extraordinarily difficult and complex issues discussed in the First Committee, and in particular to the patience, ingenuity and dedication of Mr. Koh and Mr. Nandan, representatives of two countries with which New Zealand had very close relations.

3. The fact that his delegation would concentrate, in the limited time available, on some of the shortcomings of the latest version of the text (A/CONF.62/C.1/L.28/Add.1) implied no criticism of the authors. Any criticism to be made was of States whose determination to protect their national interests at all costs had stood in the way of simpler, more comprehensible and more workable solutions.

4. The compromise formulas agreed on for the composition of the Council and its decision-making procedures were complex and cumbersome in the extreme. His delegation could not but feel uneasy about the handicaps which had been placed on the Council's ability to carry out its important tasks expeditiously and efficiently. It would be far from simple to determine precisely which members of the Authority fulfilled the qualifications for inclusion in the various groups from which members of the Council must be elected. The conditions which the Assembly was required to observe in electing the Council conflicted with one another, particularly in view of the inclusion of a provision that it should elect only those States nominated by the various groups, the composition of which could be subject to uncertainty and controversy. Those developed States which would never be major producers or miners of minerals found in the sea-bed would be very inadequately represented on the Council. That was an unfair situation since most of the States concerned would be substantial contributors to the financing of the Authority and the Enterprise, and in some cases would also possibly contribute funds under article 82.

5. In making those comments, his delegation was not objecting to the inclusion of the new texts in the next revision of the negotiating text, but rather wished to stress the crucial importance of ensuring that the Enterprise was a self-sustaining operation from a very early date and that an excessively elaborate bureaucratic structure should not be allowed to develop at the seat of the Authority. If the elaborate machinery created was enabled to operate only by constant external replenishment of its financial resources, many States, including those in the category he had referred to, would hesitate to ratify the convention and accept its financial obligations.

6. One of the most difficult and controversial remaining major issues of substance was that of finding an acceptable formula for the delimitation of maritime areas between States with neighbouring or opposite coasts. In that regard, his delegation preferred the language used in A/CONF.62/WP.10/Rev.1. In its view, a text which provided that a delimitation agreement must be consistent with equitable principles and which referred to the median line as one method that might be employed in appropriate cases, should meet all reasonable requirements. Obviously, the median line provided the simplest solution where no special circumstances existed. Equally obviously, there were cases where circumstances made the median line inequitable. Any generally acceptable solution must take account of those considerations. However important that issue might be, it should not be allowed to delay the conclusion of the work of the Conference indefinitely. His delegation had been glad to learn that intensive nego-