Third United Nations Conference on the Law of the Sea

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138th Plenary meeting

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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-

tiations had been continuing, even at the current late stage of the session. It considered that, if no agreement was reached, the Collegium should refine the provisions of the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5), in the light of the reports of the two groups which had conducted consultations at the current session and the views expressed in the current debate.

7. With regard to the question of participation, his delegation attached importance to ensuring that island countries which exercised full competence over the matters with which the convention would deal should have an opportunity to ratify it on their own behalf. In the Pacific region alone, enormous areas of ocean were encompassed in the economic zones of such States. It was essential, therefore, that island States which were fully self-governing, but which had voluntarily stopped short of full independence, should have the right to sign and ratify the convention.

8. It was a measure of the progress made by the Conference that his delegation had not found it necessary to concentrate, in its statement, on matters directly affecting New Zealand's interests as a coastal State. The line between international and national jurisdiction had been firmly drawn. As his delegation had said in the earlier part of the session, it had been prepared to accept the texts produced by the Chairman of negotiating group 6 and subsequently included in Part VI of the second revision of the negotiating text on the explicit understanding that that would be the final package with regard to the continental margin. That continued to be his delegation's position.

9. His delegation agreed that the current session should be the last for the negotiation of substantive issues. Accordingly, the revised text about to be prepared by the Collegium should become a formal document of the Conference not later than the beginning of the following session.

10. Mr. SYMONIDES (Poland) said that important progress had been made at the current session on the issues dealt with by the First Committee. The Conference was closer to negotiated solutions, and the First Committee's package might constitute a good basis for a consensus. The most important step had been the finding of a compromise voting formula for the Council. His delegation, while supporting the view that all questions of substance should be decided by a three-fourths majority, was nevertheless ready to accept the new proposal. In respect of all important questions, the Council should try to arrive at a consensus, and his delegation noted with satisfaction that consensus had been expressly provided for, at least in certain categories of decisions. Since the negotiations leading to the compromise voting formula had been very long and difficult, the Conference should avoid any action which might destroy the delicate balance achieved. Consequently, his delegation could not accept any proposal to increase the membership of the Council.

11. Although ready to accept the new package, his delegation still had some reservations about it. The system being created did not, in the opinion of his delegation, contain sufficient guarantees that medium-sized countries with no marine technology would be able to participate in activities in the Area. Moreover, the so-called anti-monopoly provisions might prove to be too vague, so that most of the activities in the Area could be monopolized by a few multinational consortia.

12. Like the majority of delegations participating in the negotiations, his delegation believed that the Enterprise should be viable and that it should start activities in the Area as soon as possible. However, while accepting the necessity of providing the Enterprise with the necessary funds and technology, his delegation believed that the financial burden placed on States should be proportionate to the benefits which they would derive from the exploitation of the resources of the Area. In that connexion, he noted with satisfaction that the system of payment of interest-free loans by States parties had been made more flexible and was now more in keeping with real requirements for the funding of the Enterprise. His delegation had no objection to the inclusion of the new provisions in the revised text.

13. Referring to matters dealt with by the Second Committee, he stressed that his delegation could not accept the text of paragraph 1 of articles 74 and 83 as contained in the second revision of the text. The reasons for its objections had already been stated during the first part of the session. While the discussions among selected delegations from the groups of sponsors of documents NG7/10/Rev.2 and NG7/2/Rev.2 had been useful, the opportunity to arrive at a compromise text on delimitation problems had been wasted. In the view of his delegation, the differences concerning delimitation criteria had been reduced to the meaning and placement of the term "international law" and to the qualification of "circumstances".

14. Many of the provisions agreed upon in the Second Committee were of a compromise character. His delegation, while far from satisfied with the provisions concerning the access of geographically-disadvantaged States to living resources of the economic zones, or with the definition of the continental shelf, shared the view that issues which had been discussed thoroughly by the Second Committee should not be endlessly reopened. Nevertheless, that did not exclude the need for agreed interpretations of definitions of certain unclear terms. One such term was the notion of "region", as used in articles 69 and 70. In his delegation's opinion, semi-enclosed seas, poor in living resources and without available surplus, did not constitute regions within the meaning of article 70. In such cases, the term "region" should be understood as an oceanic region, in accordance with the terminology used by the Food and Agriculture Organization of the United Nations.

15. His delegation supported the recommendation of the Drafting Committee that the term "geographically-disadvantaged States" used in seven articles and the term "States with special geographical characteristics" used in two articles should be harmonized. His delegation, representing a geographically-disadvantaged State, strongly urged acceptance of that term.

16. While it would prefer slightly different wording in the case of certain provisions, his delegation was convinced that, taken as a whole, the general provisions (see A/CONF.62/58) and final clauses (see A/CONF.62/60) would secure the effectiveness and durability of the future convention. That observation applied specifically to the question of reservations and amendments. In the view of his delegation, article 303 was properly worded and constituted an adequate safeguard against the erosion of the package deal on which acceptance of the convention as a whole was based.

17. His delegation considered the wording of articles 306 to 309 as a compromise and could accept them as such, on the condition that other delegations did not propose further changes. His delegation had reservations with regard to article 302, paragraph 4.

18. In conclusion, he expressed the hope that, at the following session, it would be possible to conclude the substantive work of the Conference.

19. Mr. AL HADDAD (Democratic Yemen) associated himself with those delegations which had expressed concern about certain articles which ran counter to the efforts of the international community to establish the concept of the common heritage of mankind. In spite of the efforts made in the First Committee, a number of central questions had not been dealt with in the articles. Article 155, for example, made no provision for the concept of a moratorium. The concept of consensus referred to in article 161 could also give rise to practical difficulties and the provisions of paragraph 2 (*a*) of that article could weaken the powers of the Assembly. If that subparagraph was to be retained, it should not prejudice the provisions of article 158, paragraph 4, in any way.

20. His delegation attached importance to the question of transfer of technology and felt that the provisions of annex III, article 5, should be made more responsive to the needs of the developing countries.

21. The text of articles 74 and 83 as contained in the second revision of the negotiating text was well-balanced and constituted a basis for a possible consensus.

22. The provisions concerning the right of innocent passage of warships through the territorial sea should be improved and greater emphasis should be given to the sovereign rights of countries within the zones in question, in particular the right to enact legislation concerning innocent passage.

23. The convention should be open to accession by territories which were not yet independent, and by national liberation movements, including the Palestine Liberation Organization.

24. Important progress had been made at the current session of the Conference. He expressed the hope that delegations would continue to work in a spirit of co-operation in order to conclude a convention as soon as possible.

25. Mr. OGNIMBA (Congo) said that his delegation, like many others, believed that the package created, while not entirely satisfactory, could be incorporated into the third revision of the negotiating text and thus constitute a new basis for future negotiations. The package represented a genuine compromise and was an accurate reflection of the arduous and difficult negotiations which had taken place.

26. With regard to the machinery for the adoption of decisions within the Council, his delegation had consistently opposed any voting system which would permit the use of the veto. Accordingly, it could accept the compromise arrived at, provided that the scope of the decisions to be taken by consensus was reduced. The consensus procedure could be used as a form of veto. The Conference might consider the possibility of redefining consensus so that it could be given a more positive interpretation.

27. His delegation subscribed to the position expressed by a number of delegations which had stressed the need to incorporate the idea of a moratorium in article 155, paragraph 4, in document A/CONF.62/C.1/L.28/Add.1.

28. His delegation stressed once again that the transfer of technology should be as complete as possible and should comprise all necessary operations, including the transport and processing of mineral ores.

29. His delegation wished to express deep concern about the practice of certain industrial Powers which were attempting to expropriate the resources of the common heritage of mankind by means of unilateral legislation. The principle that the Area represented the common heritage of mankind had been generally accepted in international law. In that connexion, his delegation had supported the Chilean proposal to insert a provision making that principle a peremptory rule. Accordingly, his delegation considered any attempt to expropriate the resources of the Area to be a flagrant violation of international law, and condemned it accordingly.

30. Mr. IBAÑEZ (Spain), referring to Part III of the second revision, said that his delegation, which represented a State bordering a strait, would have welcomed codification of the traditional regulation based on the right of innocent passage. However, in a spirit of compromise, his delegation had agreed that shipping should be subject to the new transit passage régime and could endorse the text as a basis for negotiation, despite its shortcomings with regard to the regulatory powers conferred on coastal States.

31. The provisions concerning overflight, on the other hand, were unacceptable to his delegation in that they did not specify the prohibited activities of aircraft, and did not refer expressly to the laws and regulations which coastal States might promulgate in connexion with overflight, or to the air corridors which it would be necessary to establish. What caused his delegation the gravest concern was the fact that government aircraft remained practically outside the application of all regulations, since they were simply required to comply with the safety standards and measures established by the International Civil Aviation Authority, thereby representing a danger to air traffic, to the populations living near straits and to the very security of the States being overflown. Moreover, it was quite obvious that aircraft and vessels, in effecting transit passage, could create serious dangers and, although the most appropriate procedure would have been to make them subject to an objective liability régime, the addition of a general provision on liability would improve the existing text. In short, the inclusion in Part III of detailed regulations would help to avert problems of interpretation and application in the future.

32. A similar drafting deficiency was also apparent in a number of articles in Part XII. Under article 221, for example, coastal States could, in certain cases, take emergency measures even beyond the 200-mile limit. However, it was not stated clearly that they could take similar measures close to their coastlines when an accident occurred in a strait whose waters formed part of their territorial seas.

33. Article 233 discriminated against States bordering straits, where there was a greater risk of accidents which might cause irreparable damage to the marine environment. Moreover, it was poorly drafted, since it was not the legal régime of straits, but the régime of passage through them, that was affected.

34. The articles relating to the exclusive economic zone reflected the delicate balance which had been achieved, although, as far as the exploitation of resources was concerned, they did not fully safeguard the legitimate interests of States whose nationals had traditionally fished in areas which had previously been considered as the high seas. In particular, a contradiction existed between the obligation of the coastal State to allow access to those States and the apparent right of developed States with special geographical characteristics to have access to the economic zones of third States. The establishment of off-shore fishing fleets already prejudiced the existence of special characteristics, whether of a geographical or economic and social nature, and there was no reason to draw any distinction.

35. As far as the delimitation of maritime areas was concerned, the reference to international law in articles 74 and 83 of the second revision provided a basis for a solution, which his delegation saw as close, though elusive. In article 298 of the second revision, the solutions provided for ranged from the binding settlement of disputes to simple conciliation in certain cases. His delegation advocated a comprehensive system based on the simple and objective principle of equidistance, corrected where necessary to take account of the special circumstances of each case and supplemented by a system for the binding settlement of disputes. However, none of those wishes was met in the existing text of articles 74 and 83, which, to be acceptable, must contain a sufficiently precise formula based on the reference to international law.

36. Referring to Part XI, he said that the wording suggested by the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.28/Add.1) did not take into account the interests of the medium-sized industrialized countries in respect of the composition of the Council. Since those countries were to bear a heavy financial burden, it was only just that they should be afforded a reasonable opportunity to participate in the management of the Authority. Article 161, paragraph 1, of the second revision must therefore be amended. That could be done without affecting the delicate balance achieved in paragraph 7 of the same article. As the negotiations on that question were to take place at the following session, his delegation proposed that the third revision of the ICNT should contain an additional foot-note to article 161, paragraph 1, indicating that the composition of the Council would be decided in subsequent negotiations.

37. His delegation also wished to express concern regarding the provisions for the financing of the Enterprise.

38. With regard to the final clauses, he noted that a number of delegations had expressed the view that the convention should prohibit reservations absolutely, on the grounds that the concepts of consensus and the overall package were incompatible with reservations. However, such an approach would be valid only to the extent that all matters were decided by a genuine and absolute consensus satisfying all delegations. If that ideal was unattainable, some reservations should be permitted. While the admission of reservations would affect the integrity of the convention, it would also favour its universality. Consequently, in the matter of reservations, the most appropriate course would be for the Conference to maintain a satisfactory balance between the governing principles of integrity and universality.

39. Mr. FODHA (Oman) said that his delegation agreed in general with the position of the Group of 77, as stated by the representative of Uganda at the 135th meeting, and was generally satisfied with the compromise reflected in the provisions relating to the procedure for the adoption of decisions in the Council.

40. He agreed with the representative of China that a way must be found to reconcile the provisions of subparagraphs (*b*) and (*c*) of article 161, paragraph 7.

41. With regard to the question of the transfer of technology, his delegation, while recognizing the improvements embodied in the revised articles, had hoped that some reference to processing, marketing and delivery would be included.

42. His delegation had serious reservations with regard to the provisions concerning passage through straits for the purpose of international navigation; they did not represent a universally satisfactory compromise. His delegation had made many concessions and had shown its willingness to co-operate in that regard. Nevertheless, a number of States bordering straits, including Oman, had not received just or equitable treatment. The concerns of those States were very real and should not be overlooked in a convention attempting to develop the rules of international maritime law. The main concern of his delegation was that, if the text remained unchanged, it could limit the universality of the future convention. It should therefore be amended.

43. His delegation agreed with those delegations which held the view that coastal States had the right to formulate laws and regulations relating to the right of innocent passage of warships through their territorial sea, including the right to prior notification and authorization.

44. His delegation felt that it would have been possible to improve the provisions of article 76 on the basis of the criteria of the distance from the baseline from which the width of the territorial sea was measured. However, in the light of the ambiguity of the geographical and legal concept of the continental shelf, he recognized that the existing text came as close as possible to a compromise solution.

45. His delegation supported the proposal put forward in document NG7/2/Rev.2 concerning the median or equidistance line. That concept was crucial to maritime delimitations between States with opposite or adjacent coasts. The existing provisions of articles 74 and 83 formed a sound basis for a possible compromise solution. While satisfactory progress had been made on the question of settlement of disputes, his delegation had reservations with regard to the emerging trend towards binding settlement of disputes.

46. With regard to the question of reservations dealt with in articles 303 and 304, he said that, as a matter of principle, it was impossible to force States to accept a text which limited their sovereign rights in matters established by international law, the practice of States or the decisions and opinions of the International Court of Justice. A convention which dealt with complex questions was bound to overlook issues regarded by some States as vitally important to their sovereignty. Consequently, further consideration should be given to the substance of articles 303 and 304. As they stood, those articles precluded the expression of reservations and could have a negative effect.

47. Mr. KOROMA (Sierra Leone) said his country was particularly interested in the conclusion of a convention on the law of the sea for the following reasons. In the first place, as a coastal State dependent on trade, it was committed to the freedom of oceanic and maritime traffic, the prevention of marine pollution and the protection of the marine environment. Secondly, as fish was one of its main natural resources, it was determined to conserve that resource and protect it from unbridled and gratuitous exploitation. Thirdly, as a developing country, it held steadfastly to the position that the sea-bed and its resources beyond the limits of national jurisdiction were the common property of all countries and peoples, and their orderly exploitation offered an opportunity to increase the standard of living of all peoples, particularly those in the developing countries. It would therefore be contrary to contemporary international law for any State or group of States to appropriate the Area or exploit its resources unilaterally.

48. It was against that background that his country judged both the second revision of the text and the results of the negotiations recently concluded. His delegation's acid test of the proposals made was how far they would promote the equitable distribution of the economic and financial resources of the ocean and the sea-bed and not lead to the accentuation of the economic disparity between the industrialized and developing countries.

49. When, in 1971, his country had found it necessary to declare a 200-mile territorial sea in order to safeguard its economic, historical and security interests, it had stated that it would be prepared to negotiate on the proposed 12-mile territorial sea and 200-mile exclusive economic zone provided that its rights and interests could be adequately safeguarded. On condition that the provisions of the negotiating text on those questions could be respected, they might be acceptable to his Government. On the other hand, it considered that the coastal State had a right to require prior notification or authorization for the innocent passage of warships through its territorial sea. It supported marine scientific research within the 200-mile limit or on the continental shelf, provided that that too was subject to the prior consent of the coastal State.

50. On the method of delimiting both the exclusive economic zone and the continental shelf, it considered that, in the absence of an agreement, the median line should be followed and therefore agreed that articles 74 and 83 of the negotiating text offered the best basis for a compromise. His Government could not accept unilateral action which ran counter to that principle.

51. On conservation measures, his delegation considered article 62, paragraph 2, of the negotiating text unacceptable and felt that it must be improved.

52. Although Sierra Leone had never specifically endorsed the parallel system of exploitation of the resources of the sea-bed provided for in the negotiating text, it was prepared to accept that system provided that it resulted in the equitable distribution of those resources and took into particular consideration the needs of the developing countries. Therefore, in order to achieve that objective, the Group of 77, of which Sierra Leone was a member, had prepared a list of important issues remaining to be solved in connexion with the deep-sea mining provisions.

53. Firstly, article 151 should give greater protection to land-based producers of metals, particularly in the developing countries. With regard to the review conference, provided for in article 155, the group of African States had called for the cessation of any new sea-bed mining ventures if a review conference to be called 15 years after commercial production had started was unable to agree on a revised system. Such a cessation was considered desirable in order to ensure that those with a vested interest in the initial mining system would not be able indefinitely to prevent a new system from coming into being. The relevant provision in the second revision was both weak and inconclusive.

54. On article 161, which dealt with voting in the Council, the Assembly of Heads of State and Government of the Organization of African Unity had declared in June 1980 (see A/CONF.62/104) that a system of voting in the Council based either on the principle of veto or on chamber or weighted voting was unacceptable.

55. The provision dealing with the transfer of technology in article 5 of annex III was hedged about with conditions and the entire burden of acquiring technology had been placed on the Enterprise. The Group of 77 felt that the obligation to transfer processing technology in order to make the system viable must be expressly stated in the convention. The once-and-for-all limit of 10 years on the transfer of technology was also unacceptable. On the financial arrangements, the Group of 77 had concluded that the funds for the Enterprise's first mining site had not been guaranteed and that the Enterprise must be exempted from paying tax.

56. Such changes as had been proposed regarding the review conference did not satisfy the crucial requirement for imposing a

moratorium after 21 years of sea-bed production if no agreement to revise the system could be reached, but merely prolonged the system for a further 12 months. His delegation, therefore, reserved the right to revert to that matter during the next session.

57. The introduction of the veto, however disguised, in the provisions of article 161 did not augur well for the effective running of the Council, as it was likely to lead to a paralysis of the functioning of the Council: that article should be renegotiated.

58. His delegation could not fail to note that the commitment of the industrialized countries on the transfer of technology to the Enterprise had been severely restricted. The industrialized countries had refused to state expressly that processing technology would be made available to the Enterprise and thus there was no guarantee that it would be able to operate a viable system.

59. With regard to financial arrangements, no formula had been devised to ensure that all the funds committed would be available if some States decided not to become parties to the convention, in which case the funds required for the first integrated operation might not be forthcoming, and the Authority might be compelled to undertake something less than a fully integrated operation.

60. Believing that it was in the overwhelming interest of the international community that the convention should enter into force at the earliest opportunity, his delegation was prepared to consider provisions for bringing it into force upon ratification by between 50 and 70 of the present membership of the United Nations, provided it took into account the principle of equitable geographical representation. His delegation also considered that, in keeping with the common heritage concept, accession to the convention should be open to national liberation movements recognized by the United Nations and the regional organizations concerned.

61. Mr. SULTAN (Bangladesh), noting that nothing of such magnitude as the proposed convention on the law of the sea had hitherto been attempted in the field of international law, welcomed the consensus so far achieved.

62. Certain provisions of the second revision of the negotiating text nevertheless posed serious problems for his delegation. In areas where consensus might not be reached, the vital and fundamental interests of some countries might be disregarded or compromised. While realizing that it was not possible to devise a formula for every special circumstance in every area, his delegation considered that every effort should be made to make maximum provision for exceptional circumstances, especially when they concerned a particular country so vitally that they could not be ignored.

63. The peculiar geomorphological conditions and concave nature of the coast of Bangladesh had created for his country an extraordinary situation which deserved serious consideration so that it might be protected from an unfair and untenable solution. That situation concerned the delimitation of the continental margin and of the exclusive economic zone of States in the northern part of the Bay of Bengal. In the opinion of his delegation, the baseline should be determined by means of depth rather than objects on the coast, which in Bangladesh was heavily indented and ever-changing. His country therefore supported delimitation of the exclusive economic zone and continental shelf on the basis of the principle of equity, which had been established by several rulings and judgements of the International Court of Justice when settling maritime boundaries. His delegation regretted that the agreed procedure for amending paragraph 1 of articles 74 and 83 had not been adhered to and could not therefore endorse those articles. Unless a satisfactory formula was found to resolve that issue, his delegation reserved the right to submit its views in writing at a later date. It should be borne in mind that Bangladesh was one of the poorest countries in the world with a population of 90 million and an area of only 55,000 square miles. It had very limited land-based resources with the result that its maritime resources were all the more vital.

64. On the question of the settlement of disputes, Bangladesh was in favour of binding adjudication, but would prefer machinery which would expedite the process.

65. His delegation maintained that the passage of warships in the territorial sea should not be permitted without the prior consent of the coastal State concerned, since passage without consent would represent an encroachment upon the sovereignty of the coastal State.

66. His country also considered that a State had the right to enter a reservation on any provision of the convention if it considered the provision to be of vital importance to its national interest.

67. Bangladesh had supported the 200-mile limit to national jurisdiction over the continental shelf with a view to ensuring that as great an area of the sea as possible became the common heritage of mankind. It hoped that the International Sea-Bed Authority would be designed and operated in such a manner as to ensure and safeguard the vital interests of all countries, particularly the developing countries. In that respect, his delegation strongly reiterated that the transfer of technology should be conducted in a realistic manner so that the Enterprise became a success within the shortest possible time.

68. Mr. ROBLEH (Somalia), while welcoming the consensus so far achieved after long negotiations, said that his delegation still found certain aspects of the second revision of the negotiating text unsatisfactory.

69. As had been explained by the representative of Ecuador at the 135th meeting, a significant number of coastal States had enacted legislation extending the width of their territorial waters to 200 miles long before the inception of the Third United Nations Conference on the Law of the Sea. When they had enacted that legislation, those States had not been accused of violating any existing international law and had invariably provided for unimpeded freedom of navigation beyond a restricted area of the coast. That group of States, to which the Somali Democratic Republic belonged, considered that the 200-mile territorial sea and the interests of the international community, as distinct from the sectional interests of the major maritime Powers, were not necessarily irreconcilable. Hence, his delegation, along with other like-minded delegations, continued to urge that the future convention must preserve those acquired rights, either through reservations or declarations by the States concerned or through the insertion of a safeguard clause in the text.

70. In order to protect small and powerless developing coastal States from rivalry among the major maritime powers for domination of the oceans and the strategic sea lanes, his country supported the suggestion that provision for prior authorization by the coastal State for the passage of warships through the territorial sea should be incorporated in the future convention. It therefore noted with dissatisfaction that an Argentine proposal to that effect, which had been submitted in New York in spring 1980 (C.2/Informal Meeting/58) and had been endorsed by some 37 States, had not been reflected in the second revision. The advocates of prior authorization were willing to negotiate with those States which objected to the rule for purely strategic reasons with a view to devising a mutually acceptable formula.

71. His delegation had consistently supported the adoption of the new concept of the exclusive economic zone, especially as enunciated in the Organization of African Unity declaration on the issues of the law of the sea.[1] Although the system provided for in Part V did not entirely meet its expectations, it considered that, with the introduction of a few amendments, that system could command universal endorsement. One such amendment was called for in relation to article 58, paragraphs 1 and 2, which, if they were to remain in their present form, might lead to the economic zone becoming an integral part of the high seas and thus deprive it of all semblance of exclusivity. His delegation therefore strongly urged that article 58 should be reworded so as to restore the juridical integrity of the doctrine of the exclusive economic zone.

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

72. His delegation attached the greatest importance to those provisions in Part V pertaining to conservation and utilization of the living resources of the exclusive economic zone. If, therefore, consensus was eventually to be achieved on a complete package deal, articles 61, 62, 63, 69 and 70 must not be tampered with.

73. Turning to the highly sensitive issue of the delimitation of the exclusive economic zone and continental shelf between States with opposite or adjacent coasts, he expressed consternation at the wording of article 83 in the second revision. As was generally acknowledged, that wording did not reflect any final compromise. His delegation considered that such delimitation should be determined on the basis of the principle of equity. It was convinced that a serious analysis of customary international law, as articulated in the 1969 North Sea cases[2] and the 1977 arbitral decision on the Channel case between France and the United Kingdom, would prove that equity and equitable principles rather than the purely geometric methods of the median or equidistance line had become consecrated as the general rule in international law in delimitation matters.

74. His delegation was opposed to any compulsory third-party adjudication, for the settlement of disputes, but for the sake of compromise would lend its support to the new doctrine of compulsory conciliation provided for in article 298. On the question of interim measures, it considered that the formula devised by Mr. Manner had certain positive aspects which could make the text more acceptable to the majority of delegations.

75. Although his delegation was not entirely satisfied with the outcome of the negotiations during the resumed session, it considered that important progress had been made towards a solution of the outstanding hard-core issues concerning operation of the sea-bed system. The decision-making procedure in the Council, however, needed further improvement. The decision whether a question fell within one of the three categories of decision-making on substantive issues should be by a simple majority, as provided for in the case of all other procedural questions. Decisions on residual matters not specifically listed in article 161, paragraph 7, should preferably be adopted by a simple majority. It was his delegation's earnest hope that consensus should not be used by any individual country or group of countries to hold up or paralyse the work of the Council, thus frustrating the efforts of the international community to create viable and effective machinery for the exploitation of the common heritage of mankind.

76. With regard to the transfer of technology, the Enterprise should be enabled to obtain the technology necessary not only for recovering mineral resources from the sea-bed, but also for the processing of such minerals. The definition of technology contained in annex III, article 5, paragraph 8, should therefore be amended to include processing technology.

77. The results of the negotiations on matters within the purview of the Third Committee were generally gratifying to his delegation, which believed that most of those issues could now be agreed to by a consensus. A few issues, however, such as those dealt with in articles 253 and 263 of the second revision, needed further negotiation as they were of vital importance to his and many other delegations.

78. Lastly, his delegation could not endorse article 303 as worded in document FC/21/Rev.1/Add.1, which provided that no reservations might be made to the convention. It did not intend to renounce its right to enter a reservation to any provision or part of the future convention until such time as a fully satisfactory package could be arrived at. It therefore noted with pleasure that that article was still considered provisional and was expressly subject to the approval of the convention by consensus. It associated itself with other delegations which considered that accession to the convention should be open to national liberation movements recognized by the United Nations and the regional organizations concerned.

[2] *North Sea Continental Shelf, Judgment, I.C.J. 1969*, p.3.

79. Mr. PINTO (Portugal) said that, subject to the following comments, his delegation was prepared to endorse the third revision of the negotiating text because of the many improvements it contained and because it was generally recognized that it was still open to negotiation.

80. With regard to delimitation of the economic zone and continental shelf between States with opposite or adjacent coasts, his delegation, as a sponsor of document NG7/2/Rev.2, considered that the delimitation criteria, the interim measures and the settlement of disputes constituted a package and, therefore, articles 74, 83 and 297 of the second revision could not be dissociated, since they represented the only compromise formula achieved at the Conference. His delegation therefore agreed with the USSR delegation on that question and hoped that the articles in question would be used at the next session as a basis for consensus.

81. For ecological reasons, his delegation had joined the delegations of Argentina and Canada in their proposal for the amendment of article 63 concerning the protection of stocks (C.2/Informal Meeting/54/Rev.1); it hoped that that article would be amended to reflect the most recent compromise proposal that had been circulated.

82. He reiterated his delegation's support of the text concerning innocent passage but regretted the opposition which had been encountered by its proposal on the protection of archaeological and historical objects in the marine environment in the exclusive economic zone (C.2/Informal Meeting/43/Rev.1). Its aim had, however, been partly achieved with protection recognized in the 24 miles of the contiguous zone.

83. As to the problems dealt with by the Third Committee, his country, as a party to the Oslo, London and Paris Conventions, whole-heartedly supported the existing text relating to pollution, dumping from ships, marine scientific research and the transfer of technology. Article 263 might be improved by the elimination of the double system of responsibility. On the question of the final clauses, his delegation had no serious objection to the latest amendments (see A/CONF.62/L.60), provided it was understood that it was essential to allow for the expression of certain reservations.

84. Throughout the negotiating text there were many technical clauses which needed improvement. For example, the term "geodetic datum" in article 16, paragraph 1, had been wrongly translated in the French and Spanish versions as "*données géodésiques*" and "*datos geodésicos*" respectively, which were entirely different concepts.

85. Turning to matters dealt with by the First Committee, he reiterated his delegation's concern about, and opposition to, article 161, paragraph 1, which dealt with the composition of the Council of the Authority. The provisions contained therein, which would apparently reappear in the third revision, had never been the subject of a consensus in the Conference. Discussion of the constitution of the Council, which should logically have been considered first, had always given way to discussion of its decision-making mechanism, and the representative of certain Powers were now insisting that it was too late to discuss article 161, paragraph 1, because it would harm the consensus painfully obtained on that point. His delegation considered that the opinion of a minority should not prevail and thereby sacrifice the interests of so many countries, in particular, the medium-sized and small industrialized countries. If the Council, which was to give effect to the fundamental principle of the common heritage of mankind, was elected not on a democratic basis with a rotational system, but on the basis of a system tending to recognize and exaggerate the interests of a few countries, that principle would be doomed. By incorporating the Swedish proposal, which his delegation had co-sponsored, the Conference would increase the representativeness of the Council and would encourage the 14 medium-sized industrialized countries of the West, which would account for about 7.8 per cent of the financial contribution to the Enterprise, to contribute their share. Under the existing text of article 161, paragraph 1, they would be practically excluded from the Council.

86. As an alternative to such an enlargement of the Council and to mitigate the influence of the dominant and economic interests provided for in article 161, paragraph 1, his delegation had, in 1978 and 1979, put forward a proposal to give representation in the Council to certain social and human interests, namely, those of the itinerant workers who would exploit the Area for the Enterprise. That proposal had been supported by the International Labour Organisation and the representative of the Holy See, and his delegation hoped that, at least, there would be an explicit reference in the convention to some kind of protection and representation of the interests of those workers.

87. Lastly, he expressed support for the candidacy of the European Economic Community as a party to the convention and reiterated Portugal's candidacy of Lisbon as the seat of the International Maritime Court.

88. Mr. ROSALES RIVERA (El Salvador) said that, in view in particular of the success achieved by the First Committee, the Conference had now reached a promising stage in its work, even though no general agreement had been secured on such important matters as the delimitation of the exclusive economic zone between States with opposite or adjacent coasts or on questions which, like that of the final clauses, required further discussion if a generally acceptable solution was to be found.

89. He believed that, while it might make for slow progress, the Conference's practice of proceeding by consensus also made for surer progress. Indissolubly linked with that principle of consensus was the concept of the package deal, which obliged States to assess proposed provisions not merely on the basis of their own national interests, but also according to the value of those provisions for the convention as a whole. Seen in that light, his delegation considered the provisions incorporated in document A/CONF.62/C.1/L.28 and Add.1 to represent a great step forward. They none the less remained unsatisfactory in certain specific respects, for example, in their treatment of the transfer of technology, the financing of the Enterprise, the question of a moratorium in connexion with the review conference and the relative powers of the organs of the Authority. Their most serious defect, however, lay in the machinery they established for decision-making by the Council: to require consensus on the most important questions might not merely delay their solution—which would be contrary to sound management practice—but, worse still, would be tantamount to introducing a power of veto over the work of the Council.

90. His delegation wished to stress the desire to see in the third revision a provision which, like that contained in document C.2/Informal Meeting/58, made it clear that a coastal State had jurisdiction over the passage of warships through its territorial sea, including the right to impose a rule of prior authorization or notification with respect to innocent passage. With regard to the settlement of disputes, his delegation could go no further than to accept recourse to compulsory conciliation in the case of disputes concerning exploration and marine scientific research in the exclusive economic zone. It was prepared to accept the system of implied consent to research projects, subject to the understanding that it would remain for the coastal State concerned to fix the way in which that system would operate.

91. Like many others, his delegation would prefer the final text to include provision for reservations or some other form of safeguards.

92. Mr. TSHIKALA KAKWAKA (Zaire) said that among the matters that continued to be of concern to his delegation was the question of the delimitation of marine areas between States with opposite or adjacent coasts. While the second revision seemed to make the basis for such delimitation the provisions contained in article 15, he believed that the criterion of equity should prevail and that the rule of equidistance should be applied only in the light of the relevant geographical, geological and other factors. The continental shelf should be considered as a natural extension of national territory, and any attempts at its lateral delimitation should take that into account. The outer limit of the continental shelf should be 200 miles.

93. With reference to the economic zone, articles 69 and 70 of the second revision should be merged, for they dealt with the same topic. His delegation interpreted the definition of "States with special geographical characteristics" given in article 70, paragraph 2, as including States that had traditionally fished in what, under the convention, would become the exclusive economic zone of one of their neighbours. The expression "States with special geographical characteristics" and the term "geographically disadvantaged States" that had replaced it, but had never been defined, in the remainder of the text should be harmonized in order to prevent differences of interpretation. His delegation welcomed the Romanian proposal concerning the economic zones and would be prepared to endorse it, subject to certain improvements.

94. With respect to production policies, his delegation found article 151 as proposed in document A/CONF.62/C.1/L.28/Add.1 unacceptable, for it added nothing to the corresponding provision in the second revision. The article remained heavily weighted against developing mineral-producing countries. As matters stood, the countries which intended to change from being mineral consumers to being mineral producers would not only capture 100 per cent of market growth, but would also, inevitably, take a large share of the current market. That would have disastrous consequences for developing land-based producers, some of which had invested enormous sums in production facilities. The only solution his delegation could accept would be a reduction in the limit on sea-bed production from 100 per cent to 70 per cent. Sea-bed minerals should be considered as imports when they entered national jurisdiction.

95. The system of compensation as currently proposed in article 151, paragraph 4, was also heavily weighted against current or potential developing producers. It must be revised to provide those it was designed to benefit with adequate guarantees, including a guarantee that compensation would not be postponed indefinitely. Perhaps, indeed, it would be more expedient to establish a special compensation fund, which could then also be used to offset the loss of earnings of land-locked countries that were deprived of access to the sea.

96. On questions pertaining to the Council, his delegation considered that the text now proposed for article 161 represented one of the greatest achievements of the current session. However, paragraph 1 (*c*) of that article should be amended to leave no doubt that it referred to primary production and primary, not secondary, exporters. In paragraph 1 (*d*), the words "or exporters" should be inserted after the words "major importers". His delegation had serious doubts about the proposal that decisions on certain questions should be adopted by consensus. To impose such a requirement was no more than to institute a thinly veiled power of veto.

97. With regard to the transfer of technology, the text now proposed for Annex III, article 5, certainly represented an improvement. However, his delegation would wish the transfer to be complete and cover not only equipment and methods of work, but also the transport, processing and marketing of nodules.

98. His delegation regretted the omission from the present article 155 of any reference to a moratorium on the occasion of the review conference.

99. He drew attention to the letter dated 28 August 1980 that his own delegation and the delegations of Burundi, Gabon, Lesotho, Uganda, Zambia and Zimbabwe had addressed to the President of the Conference for circulation as an official document. The proposals for inclusion in the new version of the negotiating text that were appended to that letter took into account the justified concerns of present and potential developing mineral-producing countries, whose interests must be protected by the strict rationalization of mineral exploitation in the Area, including restrictions on the number of sites and the rate and volume of production.

100. His delegation supported the proposal that the liberation movements recognized by the United Nations and other international organizations should be permitted to become parties to the future convention.

101. Mr. RIPHAGEN (Netherlands) said that his delegation welcomed the addition to article 150 of a provision, namely subparagraph (*h*), that gave formal recognition to the principal motive for establishing the Authority. It wondered, however, whether the objective set forth in article 150, subparagraph (*d*), did not restrict the full development of the common heritage.

102. The fact that article 151 now made it abundantly clear that the Authority might participate in commodity conferences in which both producers and consumers took part was also welcome. His delegation remained concerned that the article might upset the balance that should be struck between the interests of consumers and producers, but it did not wish to reopen discussion of that matter.

103. The proposals made in article 161, paragraph 7, with regard to decision-making by the Council represented a major step forward. His delegation subscribed to the view that any change in the size of the Council would upset those new voting arrangements, and appreciated that it had been necessary to change the procedure for the approval of plans of work in order to arrive at the new text.

104. With regard to the provisions of annex III, his delegation still doubted the justification of dealing with the transfer of technology to developing countries outside the forums where that matter was rightly discussed. It would also need to consider whether the extension of the period during which an operator might be required to make his technology available to the Enterprise did not distort the balance necessary in every package deal. Another provision to which it would give particular attention was that in article 5, paragraph 3 (*b*), which it feared might pose a serious obstacle to activities in the Area. While article 13 was now clearer, the terms it proposed still seemed to discourage rather than encourage the development of the resources of the deep-sea bed. In that connexion, serious consideration should be given to the position of contractors who had already made substantial investments in deep-sea mining.

105. Although a number of improvements had been made to annex IV, his delegation wished to make the following observations. It assumed that the Enterprise was responsible, only for the transportation, processing and marketing of minerals which it itself recovered from the Area. In article 11, it should be made clear that the financial obligations vis-à-vis the Enterprise could be invoked only if and when activities by operators and the Enterprise could be undertaken. Furthermore, those obligations should be invoked in the light of the operational needs of the Enterprise. In that respect, it was essential that the amount required by the Enterprise to explore and exploit its first mine site should be established as soon as possible. His delegation also wished to discuss at the earliest opportunity the possibility of providing for the participation of the States contributing to the first project in decision-making by the Governing Board concerning that project.

106. In view of the important matters that had been entrusted to the preparatory commission, it had also become essential to discuss thoroughly its terms of reference and the way it would take decisions.

107. His delegation welcomed the results achieved in the Third Committee and trusted that the articles drawn up by that body and the Second Committee would remain substantially unchanged in the third version of the negotiating text.

108. Continuing as representative of the States members of the European Economic Community, he drew attention to the proposal concerning their participation in the future convention which those countries had submitted in document FC/5. In the discussions which had been held concerning that document during the current session, its sponsors had reiterated the need for the inclusion in the convention of a clause that would permit the European Economic Community to become a party to that instrument. In answer to concerns that had been expressed, they had said that, while it was impossible for practical reasons to give an exhaustive description of the competence of the Community, they would be willing to answer any specific questions concerning the Community's competence in the spheres to be covered by the convention. They were also willing to consider, and were convinced that solutions could be found to, the problems that might arise if the Community itself, but not all its member States, ratified the convention. The Community's participation in the convention would not entail an increase in representation in any domain by comparison with that enjoyed by its individual member States; a guarantee to that effect could be included in the relevant clause of the final text.

109. With regard to the international responsibility of the Community and the method of its participation in procedures for the settlement of disputes, the Community States were willing to draw up precise provisions that would ensure that interested third States always found a responsible party on the other side of the table and that no such State would be deprived of any of the guarantees offered by the convention as a result of the division of jurisdiction between the Community and its members. An assurance could also be given in the convention that such community treatment as the Community might institute among its member States would not include any provision that was incompatible with a provision of the convention concerning States parties to the instrument.

110. The States members of the Community intended to continue their discussions with other participants in the Conference in the hope of reaching a consensus concerning their proposal in document FC/5 or an appropriately amended version thereof.

111. Mr. SANTOS (Philippines) said that, since one more substantive session was inevitable, it was appropriate, before the negotiating text was revised again, to take stock of the situation and assess the progress made in the codification and progressive development of the law of the sea. Such an assessment was of extreme importance, since each nation participating in the Conference would weigh the positive aspects of the convention against the denial of national interest and would not ratify or accede to the convention unless the benefits outweighed the losses.

112. In his delegation's view, one of the Conference's outstanding achievements had been to secure recognition of archipelagic States. Part IV relating to such States was a vindication of his country's efforts, which had started in 1958 at the first conference on the law of the sea. The original intention had been to ensure the unity and security of an archipelagic State and to preserve its territorial integrity. He regretted, however, that certain onerous conditions had been imposed in that connexion.

113. The articles on the exclusive economic zone, which were designed to ensure the equitable and efficient utilization and conservation of the sea's resources, were among the most significant and innovative. The continental shelf provisions represented a vast improvement over the 1958 Geneva Convention on the Continental Shelf[3] and the text now provided a clear and unambiguous definition of the continental shelf of a coastal State. Other subjects had been properly included, such as those relating to straits used for international navigation, the right of access of land-locked States and conservation of the living resources of the high seas.

114. One of the most contentious issues at the Conference related to the régime of the deep-sea bed and the machinery for exploiting its resources. The Conference had faced up to the issue, although the solution offered still presented some difficulties for his delegation.

115. Those were some of the more important positive aspects of the negotiating text.

116. On the negative side, it was unfortunate that recognition of the archipelagic States had been made conditional on acceptance of a régime of sea lanes passage through archipelagic waters, which were technically internal waters, being within the baselines. That in effect nullified the original intent regarding the security and integrity of the archipelago. Even more difficult for his country was the imposition of the right of overflight over the

[3] United Nations, *Treaty Series*, vol. 499, No. 7302, page 313.

archipelagic sea lanes, a right not enjoyed over the territorial sea. As to navigation in territorial waters, his delegation, like all delegations at the Conference, believed in the principle of innocent passage for all commercial vessels as an encouragement to international trade and commerce; but it was firmly of the view that the right of innocent passage should not extend to warships. The passage of a warship through the territorial sea could never be innocent because of the very nature of the vessel. To correct that inconsistency in the negotiating text, his delegation and a number of other delegations had submitted an informal proposal clearly stipulating the coastal State's competence to require authorization or notification for warships passing through its territorial sea (C.2/Informal Meeting/54/Rev.1), but in spite of wide support, the proposal had not been given the consideration it deserved.

117. With regard to issues discussed in the First Committee, the Philippines, as a developing country with substantial land-based production of minerals similar to those found in the deep-sea bed, had been encouraged by the incorporation in the negotiating text of a policy protecting developing countries from the adverse effects of sea-bed mining on their economics. However, the production control provided for in article 151, paragraph 2 (*b*), was not consistent with that policy. The five-year production build-up and the 3 per cent floor created considerable difficulties for his delegation. The minor amendments to those figures, including provisions on market access and protection against production cutbacks, which his and other delegations had attempted to introduce had been brushed aside with the argument that concern about those matters was adequately dealt with by the system of compensation for developing countries which might suffer the adverse effects of sea-bed mining. That system, however, was subject to decision by consensus, which practically negated it. In that connexion, with regard to the voting procedure in the Council, his country had always opposed the use of a veto as being inconsistent with the principle of the sovereign equality of States enshrined in the Charter of the United Nations. The consensus provision in article 161, paragraph 7 (*d*), was in reality a veto on any proposal relating to the items listed therein and was therefore unacceptable.

118. The issues on the negative side were few, but they were extremely important. It was for that reason that his delegation had taken a keen interest in the discussion on the final clauses. His country had endorsed the inclusion of a reservation clause in the convention for cases where a State had difficulties with particular provisions but could accept the rest of the convention. The absence of a reservation clause would preclude such a State from acceding to the convention and would thus jeopardize the universality of the convention.

119. He also noted that there was no provision against unilateral national legislation on deep-sea mining.

120. With regard to the issues considered in the Third Committee, the articles on the preservation of the marine environment, marine scientific research and the development and transfer of technology represented substantial accomplishments, but it was imperative to ensure that advances in marine sciences and technology benefited developing countries through the implementation of rational and carefully planned training and education programmes and mutual assistance.

121. Mr. GREKOV (Byelorussian Soviet Socialist Republic) said that an important step forward had been taken at the present session through the finding of compromise solutions to the complex problems that had been before the First Committee. With regard to the extremely important political question of decision-making by the Council, his delegation had felt that the compromise which would have best respected the principle of the equality of all States would have been to require a three-fourths majority for all questions. Nonetheless, in view of the constructive spirit that had been demonstrated during the recent negotiations, it was prepared to accept the proposal that the requirement should be for consensus or a two-thirds or three-fourths majority, according to the nature of the question concerned. It would not voice the reservations it still had concerning that proposal, and it trusted that other delegations would show similar restraint with respect both to article 161 and to other matters that had already been settled, such as the question of the composition of the Council. In that connexion, his delegation was firmly opposed to the proposal to add a foot-note to article 161, paragraph 1.

122. In the same spirit of compromise, his delegation wished, despite its reservations on such matters as the anti-monopoly clauses, to support the inclusion of the entire package of provisions on matters within the purview of the First Committee.

123. The provisions that were proposed with respect to Second Committee matters also represented a comprehensive package that had evolved from lengthy and very difficult negotiations. They had been supported by the Group of 77 and by the main interest groups concerned, including the land-locked and geographically-disadvantaged States. Seeing the inevitability of a compromise settlement, those States had refrained for several years from submitting new proposals on such matters of great importance to themselves as the legal status of the economic zone and the questions of fisheries and transit. That made the recent attempts of coastal States to undermine the compromise provisions all the more reprehensible. His delegation was categorically opposed to the attempts to reopen the discussion of articles 21, 23, 63, 69, 70 and 125, and considered that all the provisions on which agreement had been reached at the present session could be included in the new version of the negotiating text.

124. It was gratifying to note that the Third Committee had been able to conclude its negotiations on Parts XII, XIII and XIV of the convention and that the Conference now had before it draft texts for the general provisions and final clauses of the future instrument. In view of the package nature of a comprehensive convention and the need to preserve the integrity and universality of such an instrument, his delegation would have preferred that only limited scope should be allowed for the submission of amendments. It would, however, endorse the proposed general provisions and final clauses, again in a spirit of compromise.

125. Mr. KRISHNADASAN (Swaziland) welcomed the progress made towards achieving a comprehensive and generally acceptable text. Subject to the views expressed in the present debate, his delegation considered that the text of document A/CONF.62/C.1/L.28/Add.1 should be used by the Collegium in producing the third revision.

126. With regard to decision-making in the Council, his delegation would have preferred all decisions to be taken by a two-thirds majority in accordance with normally accepted democratic practice. However, it was aware that the democratic process in the Council would be effective only if the special economic interests of the industrialized countries were adequately protected, and practical realities had thus necessitated a three-tier system comprising a two-thirds majority, a three-fourths majority and consensus for separate categories of issues. The three-fourths majority would presumably act as an inducement to international co-operation and was clearly preferable to a consensus mechanism. While consensus had the advantage of ensuring that a decision was reached by means of negotiation, involving compromise and concession, and without a vote, and did not require the positive support of all Council members, its definition in article 161, paragraph 7 (*e*), as "the absence of any formal objection" meant that a single member in the Council would have the power of veto. Although there was now no discrimination in the right to exercise the veto, it was a moot point whether in practice a Council member from a small developing State would in fact use it, however justified it might be in the circumstances. While the establishment of a conciliation committee to reconcile differences was to be welcomed, a stalemate was still possible, particularly in connexion with article 162, paragraph 2 (*l*) and (*n*), which were of vital importance to developing States. The latter subparagraph was of particular concern to peoples who had not attained full independence or other self-governing status.

127. On the question of the transfer of technology, he welcomed the improvement made to annex III, article 5, paragraph 7, which would ensure that all contracts between sea-bed miners and the Authority approved from the start of the new system until

10 years after the Enterprise had begun commercial production contained provisions committing the contractor to transfer to the Enterprise any technology he might use in carrying out activities in the Area. Thus, even a contractor who started operations in the ninth year would be obliged to transfer technology in accordance with article 5. With regard to annex III, article 5, paragraph 3 (*c*), he did not believe that the legally binding and enforceable right of the contractor to transfer third-party technology to the Enterprise without substantial cost would negate such a transfer. If substantial costs were entailed, the Enterprise would have, and should exercise, the option of paying the additional costs. In addition, his delegation would favour a more explicit definition of technology, covering technology for processing minerals extracted from the Area. It seemed illogical that provision was made in annex IV, article 11, paragraph 3, for funds to enable the Enterprise to process metals while there was no explicit provision in annex III, article 5, paragraph 8, for the transfer of technology to achieve that end.

128. As to production policy, significant headway could be made in resolving the remaining problem regarding article 151 if consideration was given to introducing a safeguard clause providing for consultations between interested parties and for remedial measures in cases where a developing land-based producer country was adversely affected by production from the Area. The question of affording market access through tariff concessions (art. 150, subpara. (*i*)) did not seem entirely relevant. At best, it would merely give any land-based producer receiving the most favourable treatment the assurance that imports from the sea-bed must be treated no differently from imports from his country. While his delegation would prefer the idea of a moratorium which would act as an essential lever to obtain agreement at the review conference it appreciated the changes made in the new paragraph 4 of article 155. As a result of the inclusion of the words "changing or modifying", provision was made for not only a partial modification, but also a complete change of the system. Since such changes or modifications were to be adopted by a two-thirds majority of States parties and would enter into force for all States parties following ratification, accession or acceptance by two thirds of the States parties, his delegation would give serious thought to endorsing the text in the context of the over-all package.

129. Since time did not permit detailed comment on the financial arrangements and Statute of the Enterprise, he would merely say that the Enterprise appeared to be structured as a viable commercial body enjoying autonomy in respect of its business. Such autonomy was a critical element in ensuring the success of a commercial undertaking.

130. Viewing the suggested amendment of Part XI and annexes III and IV as a package, his delegation believed that with good faith and the necessary political will the third revision of the text would provide a foundation for the achievement of some of the objectives of the new international economic order, so that the benefits derived from the Area could make a visible improvement to the lot of mankind, especially the poverty-stricken.

131. With regard to Second Committee matters, he regretted that article 76 on the continental shelf remained unsatisfactory and severely truncated the concept of the common heritage of mankind, which was already limited in scope by the 200-mile exclusive economic zone. The one positive feature in the present text was that the limits of the continental shelf established by a coastal State should be based on the recommendations made by the Commission on the Limits of Continental Shelf. His delegation considered as unresolved, article 82 on revenue-sharing beyond the 200-mile limit. However, it would have no great objection to the low rate of contributions specified in that article if due regard was paid by the participants in the Conference to the proposal for the establishment of a common heritage fund. If under the existing text, 10 nations were to obtain over one-half of all the exclusive economic zone, where at least 90 per cent of all sea-bed oil and gas was to be found, it was obvious that the common heritage fund would be a real and substantial move towards the establishment of the new international economic order. In that connexion, he reminded members that in the early years of the Conference the delegation of China had proposed in document A/AC.138/SC.II/L.34 that a coastal State should, in principle, grant to the land-locked and shelf-locked States adjacent to its territory common enjoyment of a certain proportion of the rights of ownership in its economic zone. That emphasized the essentially just nature of the common heritage fund proposal. He continued to believe that the balance could be redressed—albeit partially—only if at the next session positive steps were taken by all participants to establish the basic elements underlying the common heritage fund proposal, at least in the form of a declaration.

132. For his country, one of the most important features of the future convention would be the articles relating to the right of access to and from the sea and freedom of transit for land-locked States. It would not upset the delicate balance achieved in Part X if article 131, relating to equal treatment in maritime ports, was amplified by providing that ships flying the flag of land-locked States should enjoy either national treatment or most-favoured-nation treatment, whichever was more favourable to them, in maritime ports, used for purposes of access to and from the sea. Such amplification would be an advance on the present text, which granted the vessels of neighbouring land-locked States the treatment accorded to vessels of the least-favoured nation; it would also be consistent with the 1958 Convention on the High Seas,[4] article 3, paragraph 1 (*b*). He hoped that the matter could be taken up at the next session.

133. His delegation agreed that the decisions of the informal plenary relating to final clauses, settlement of disputes and general provisions should be incorporated in the forthcoming revision.

134. Mr. AL-MOUSSA (Kuwait) considered that the present session of the Conference had not been well organized. Delegations felt that their manpower had not been fully used and that much precious time had been wasted. In particular, there were a number of important topics which should have been discussed in the Second Committee. The group of Arab States had asked for a meeting of that Committee to discuss the vital question of the continental shelf beyond 200 miles, but the chairman of the committee had considered the matter already settled. During the first part of the session in New York, the group had objected to the extension of the continental shelf beyond 200 miles and many States, especially the geographically-disadvantaged, shared their views. The President had stated repeatedly that the second revision was a negotiating rather than a negotiated text. His delegation therefore proclaimed its solidarity with the group of Arab States on that question.

135. He drew attention to a serious omission from article 82, paragraph 4, which stated that payments and contributions should be made through the Authority, which should distribute them to States parties. That provision should be brought into line with article 140, which clearly provided that activities in the Area should be conducted for the benefit of mankind as a whole, particular consideration being given to the interests and needs of the developing States and peoples who had not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions. As representative of a country bordering the Arabian Gulf, which was a semi-enclosed sea, he stressed the need for co-operation among States bordering semi-enclosed seas. His delegation would like the provisions on enclosed and semi-enclosed seas embodied in articles 122 and 123 to be maintained in the form in which they appeared in the second revision. It was opposed to the deletion of those articles.

136. The claims of coastal States to sovereign rights over living resources in a 200-mile exclusive economic zone constituted in-

[4] United Nations, *Treaty Series*, vol. 450, No. 6465, p. 83.

terference with traditional fishing rights on the high seas beyond a 12-mile limit. Developing countries were building large and better fishing vessels and were becoming more capable of enjoying those rights. Article 62 failed to give the geographically-disadvantaged developing States anything substantial or meaningful in return for the 188-mile area of fishing rights they were required to relinquish within the projected exclusive economic zones. The application of the exclusive economic zone to living resources would have an adverse effect on the economies of such States.

137. The articles on straits used for international navigation were, on the whole, satisfactory because they struck a balance between the rights of ships to unimpeded transit passage and the interest of the State bordering the strait in protecting its territorial integrity and waters from evils of all kinds. There was, however, a serious flaw in article 45, which, in paragraph 1 (*b*), regulated the régime of innocent passage in straits used for international navigation between one area of the high seas or an exclusive economic zone and the territorial sea of a foreign State. Paragraph 2 of that article could cause grievous harm to States bordering on such straits, since there were always circumstances which made it necessary for such States to suspend passage of hostile ships menacing their territorial integrity and independence. He therefore considered that paragraph 2 should be deleted since it permitted abuse of the right of passage through such straits.

138. His delegation had been surprised at the two-week stalemate on the question of the delimitation of the continental shelf between States with opposite or adjacent coasts. Much valuable time had been wasted before the two groups concerned had agreed to start a meaningful dialogue. It was easy for powerful States to speak of equitable principles. Negotiations between States with opposite or adjacent coasts could drag on indefinitely and a powerful State might be encouraged to help itself to part of the continental shelf of its neighbours. The 1958 Geneva Convention had provided a correct remedy in stating that, in the absence of agreement, the equidistance criterion should prevail.

139. His Government attached the greatest importance to the question of participation. All freedom-loving countries had long insisted that activities in the Area should be carried out for the benefit of mankind as a whole, including peoples who had not attained full independence or other self-governing status. Their efforts had led to the drafting of an article which provided that the convention should be open for accession to any Territory which had not attained full independence and any national liberation movement recognized by the United Nations and the regional intergovernmental organization concerned. His delegation was confident that the Conference would adopt that provision by consensus.

140. In the opinion of his delegation, the revisions suggested by the co-ordinators regarding Part XI of the convention could serve as the basis for future negotiation. It had serious objections, however, to including in the category of subjects requiring a consensus in the Council the question of protecting developing countries from the adverse effects on their economies or export earnings of a reduction in the price or volume exported of a particular mineral caused by activities in the Area. That was too serious a matter to be left to the unfettered discretion of any member of the Council.

141. His delegation would like to see article 140 maintained in its present form, since it empowered the Assembly to devise the principles and rules for the distribution of economic and financial benefits. It did not wish the equitable sharing of benefits to be subject to consensus in the Council, which was composed of interest groups that were not sensitive to the needs of small countries. Moreover, the benefits should also be distributed among peoples, and that raised the question of the recognition of liberation movements by certain members of the Council.

142. At its present session the Conference had been prevented, through lack of time, from discussing certain important issues, such as participation and the preparatory commissions. It would be premature, therefore, to prepare the third revision before a consensus had been reached on those issues and on the revisions suggested by the co-ordinators. His delegation hoped that the new revision would be balanced and would reflect the preponderant views expressed during the present debate.

143. Mr. MELLBIN (Denmark) said that the second revision of the negotiating text and documents A/CONF.62/C.1/L.28 and Add.1 brought the Conference much closer to a consensus. His delegation particularly welcomed the breakthrough in the question of the decision-making procedure in the Council. The new proposal made it clear in a balanced way that the main task of the Council was to administer the common heritage of mankind, with due regard to legitimate special interests. The proposal was complicated and final judgement would have to await careful examination, but his delegation could support its incorporation in the new revision and also the new wording of article 162, paragraph 2 (*j*).

144. With regard to production policies, his delegation accepted that the legitimate interests of land-based producers should be taken into account; but the broad interests of the entire international community, including the developing countries which were not land-based producers, must be given due regard, as recognised by articles 150, subparagraph (*h*), and 151, paragraph 4. The production limitation formula in article 151, paragraph 2, was the maximum restriction on sea-bed production that would be acceptable to his delegation. The conclusion of international commodity agreements, as envisaged in article 151, paragraph 1, would in the long run be a preferable means of achieving the objectives listed in article 150.

145. His delegation found the financial arrangements generally acceptable. It was committed to the creation of a viable Enterprise and endorsed, in particular the new wording of annex IV, article 11. Regarding the transfer of technology, his delegation was, generally speaking, in favour of the rules contained in annex III, article 5. As for the review conference, the new paragraph 4 of article 155 represented a fair solution.

146. In the Second Committee there had been only very limited substantive discussion during the present session. He understood that to indicate that the second revision of the negotiating text was to a large extent acceptable.

147. As a seafaring nation bordering straits, Denmark had the greatest interest in Part III concerning straits used for international navigation. The present text represented a balanced solution and was acceptable to his delegation.

148. His delegation was especially pleased that during the negotiations it had been possible to formulate a text—now contained in article 35, subparagraph (*c*)—that maintained the present régime in straits in which passage was regulated in whole or in part by long-standing international conventions. After negotiations with all interested parties, it was satisfied that subparagraph (*c*) applied to the specific régime in the Danish straits, a régime which had developed on the basis of the Copenhagen Convention of 1857.

149. Part VI on the continental shelf was of great importance to his delegation. The wording of the definition of the continental shelf in article 76 was complicated and he would have preferred more texts for specific paragraphs. However, as the present wording was the result of very extensive negotiations, his delegation would be prepared to endorse it as it stood, on the understanding that the three geomorphological features mentioned in paragraph 3 as the elements of the continental margin, namely, the shelf, the slope and the rise, were to be considered as surface features of an underlying fundamental unity of the geological structure throughout the whole submarine area, which a coastal State could claim as its continental shelf, based on the concept of natural prolongation.

150. He noted that the right of laying submarine cables and pipelines over the continental shelf of another State was in principle maintained in article 79. As indicated on other occasions, his delegation saw a very great difference between the laying of a cable and the laying of a pipeline; it therefore maintained its

view that the laying of pipelines should take place only with the consent of the coastal State.

151. With regard to the important question of the delimitation of maritime zones between neighbouring countries, his delegation had stated that it did not find the proposal embodied in articles 74 and 83 in the second revision entirely satisfactory. Those texts might, however, provide the basis for a consensus in the search for a balanced solution. Other delegations did not agree with that opinion and his delegation would accordingly have found it natural and logical to continue the work in negotiating group 7. Since that had not been possible, his delegation had accepted a procedure for consultations within the so-called Group of 20. Those consultations had proved useful and had enabled both sides to clarify their position further. His delegation had stressed the importance it attached to the reference to international law now contained in the text, and the importance of maintaining the link between the delimitation criteria, provisional arrangements and dispute settlement had also been emphasized. Even though the consultations had not as yet established a basis for final conclusions, there was now a much better understanding of the problems involved and, in his view, delegations and government authorities would now have to consider the outcome of those consultations.

152. The inclusion of the final clauses in the third revision represented an important step forward in the process of finalizing the convention. In general, his delegation found the clauses in their present form acceptable. As a member of the European Economic Community, his country attached great importance to the inclusion in the final clauses of a provision which would enable the Community to become a contracting party to the future convention. Regarding the legal background and the need for such a clause, he referred to the statement by the representative of the Netherlands.

153. Mr. ALBAHARNA (Bahrain) thanked the President and the Chairmen of the committees for their efforts in amending the second revision of the negotiating text to make it more acceptable. However, despite amendments and improvements, the text still lacked many provisions desired by developing countries and Arab States, including Bahrain.

154. First, regarding the Area his delegation was in favour of a two-thirds majority for all decisions on substantive issues. It would have preferred the Assembly to be given basic powers regarding activities and investments in the Area, but in order to facilitate matters and in a spirit of compromise, it had agreed to the suggestions and solutions contained in document A/CONF.62/C.1/L.28/Add.1, which reflected majority views, subject to the following reservations. Article 140, paragraph 2, in so far as it related to article 160, which limited the right of the Assembly to distribute the financial returns and economic benefits resulting from activities in the Area should not have given the Authority powers regarding the equitable sharing of the benefits of the Area. Those powers should have been given to the Assembly because decisions of the Council on that matter were taken by consensus.

155. Secondly, the second revision did not pay sufficient attention to land-locked and geographically-disadvantaged countries. Articles 69 and 70 were limited to the sharing of the surplus of living resources; the restrictions laid down in those articles and in articles 61 and 62 should be lifted. He would like to see the text amended in a more balanced way so that coastal and geographically-disadvantaged countries had a fairer share of resources. Article 70 should contain a definition of geographically-disadvantaged countries so as to include countries which could not obtain an economic zone of reasonable size.

156. Thirdly, regarding article 76 on the continental shelf, his country was not agreeable to extending the limit beyond 200 miles from the baseline because extension at the expense of the high seas did not offer a compromise solution. His country and the group of Arab States had tried to co-operate with other countries on that point but they had met with no response. In connexion with article 82, his country had also shown a willingness to negotiate earnings from the exploitation by coastal States of the non-living resources of the continental shelf beyond 200 nautical miles. It considered that the rates of payment should be increased so that, in accordance with article 140, paragraph 2, the peoples of non-independent territories would be among those benefiting from the distribution of the resources of that zone of the high seas, which was part of the common heritage of mankind.

157. Fourthly, regarding article 45, he endorsed the suggestion made by many delegations that coastal States should be empowered to introduce laws and regulations which would give them the right to refuse warships passage through their territorial waters.

158. Fifthly, he agreed with the claims of the developing and geographically-disadvantaged countries for the right of effective participation with the coastal State in marine scientific research. Article 254 did not reflect such participation in a balanced way, and paragraph 4 could be deleted.

159. Sixthly, his delegation considered that the settlement of disputes concerning the sharing of living resources in the economic zone and the delimitation of sea boundaries should be compulsory. Article 298 should therefore be deleted.

160. Seventhly, the convention should establish the right of accession not only of States, but also of territories which had not achieved full independence in accordance with General Assembly resolution 1514 (XV) and of national liberation movements recognized by the United Nations and the regional intergovernmental organizations concerned.

161. Eighthly, regarding reservations and exceptions, he considered that article 303, paragraph 1, should apply only to provisions of the Convention adopted by consensus and that States should be allowed to enter reservations on other provisions of special importance, without contravening the basic purposes and principles of the convention.

162. Lastly, no conclusions had been reached on articles 74 and 83, and he hoped that compromise solutions would be found.

The meeting rose at 11.30 p.m.

139th meeting

Wednesday, 27 August 1980, at 9.55 a.m.

President: Mr. H. S. AMERASINGHE

General debate (*continued*)

1. Mr. NUÑEZ ARIAS (Dominican Republic) expressed concern at the harmful consequences which could result from the application of the provisions of articles 150 and 151. As a land-based producer, for which nickel represented 11 per cent of its export earnings, his country shared the views of such countries as Canada, the Philippines, Zambia, Zaire, Zimbabwe and Nigeria, which had stressed the need to seek fair and appropriate solutions in that matter.

2. His delegation found satisfactory the provisions in articles 74 and 83 on the delimitation of the exclusive economic zone and the continental shelf. Similarly, his delegation supported the present text of article 121 concerning islands.