

Third United Nations Conference on the Law of the Sea

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139th Plenary meeting

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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.

3. Lastly, his delegation supported the proposed provisions which would establish a priority right for the State finding objects of archaeological or historical value on the continental shelf or in the exclusive economic zone.

4. In conclusion, he expressed the hope that the work of the Conference would be completed at its next session in 1981.

5. Mr. NAKAGAWA (Japan) said that the First Committee's main achievement had been to devise new decision-making machinery for the Council. His delegation supported that new machinery and the allocation of various substantive items to each of the categories in the three-tier system. In that connexion, he stressed that any enlargement of the membership of the Council would endanger the delicate balance upon which that formula was based and urged the Conference to desist from attempting such an enlargement.

6. The substantive changes in the text contained in document A/CONF.62/C.1/L.28/Add.1 represented a balanced compromise but his delegation still had reservations on some of the issues involved. First, on the subject of production limitation, it did not believe that the 3 per cent floor was sufficient to attract prospective contractors to deep-sea mining, especially at the initial stage of the interim period. As for the new provision in article 150, subparagraph (i) concerning the conditions of access to markets, it was clearly an issue related to international trade and should be left to some international agreement other than the convention under discussion.

7. With regard to the transfer of technology, his delegation found it difficult to endorse the provision concerning technology owned by a third party; that system was unlikely to work smoothly and could have the effect of discouraging the active participation of private enterprise in deep-sea mining. In addition, his delegation still regarded annex III, article 5, paragraph 3 (e), as unsuitable for inclusion in the convention.

8. With regard to financial arrangements, his delegation felt that the figures of 2 per cent and 4 per cent for the production charges imposed an unduly heavy burden on contractors. As to the financing of the Enterprise, he reiterated his delegation's desire that the amount of contributions should be specified in some manner at the time of signing the convention.

9. Turning to the issues before the Second Committee, he said that although his delegation was not fully satisfied with the delimitation criteria proposed, it believed that the provisions thereon should be retained in the third revision. His Government supported Part III and in this connexion understood that no alteration of existing patterns of activity in and around Japan was necessary or contemplated. Regarding article 63, his delegation opposed any proposal which would result in the restriction of the freedom of the high seas. It believed that any arrangement for the conservation of stocks within and beyond the exclusive economic zone should be based on the voluntary agreement of the parties concerned.

10. With regard to article 65 on marine mammals, it was his delegation's understanding that the measures regarding the conservation, management and study of cetaceans in the exclusive economic zone would not necessarily be taken simultaneously with regard to all the various stocks of cetaceans, but would be taken on a stock-by-stock basis when such measures were found to be desirable as a result of consultations among the States concerned.

11. Despite some reservations, his delegation supported the inclusion in the third revision of the contents of the various reports resulting from the current negotiations.

12. Mr. YIMER (Ethiopia) expressed satisfaction at the results achieved during the present session. The end of the Conference appeared to be in sight, largely because of the satisfactory results achieved in the First Committee.

13. Perhaps the most controversial issue discussed in that Committee had been decision-making in the Council and his delegation welcomed the breakthrough in the negotiations on that point. It was convinced that success in that area would advance the prospects of consensus on other still unresolved issues.

14. His delegation believed that the over-all package on First Committee matters contained in the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.28 and Add.1) could go into the third revision, although some aspects of the voting mechanism in the Council, in particular those relating to consensus, might need re-examination.

15. Like the vast majority of the participants in the Conference, he was seriously concerned about recent developments regarding unilateral legislation on sea-bed mining. On that point, his delegation fully subscribed to the position of the Group of 77 but would nevertheless like to place on record its objection to such unilateral acts, which were bound to hinder the progress of the Conference.

16. Turning to Second Committee matters, he wished to single out the still unresolved issue of delimitation of maritime boundaries between States with adjacent or opposite coasts. His delegation was satisfied with the criteria set forth in articles 74 and 83 in their original form and in the first revision of the negotiating text. Although it still preferred those formulations, it could endorse the reformulation contained in the second revision (A/CONF.62/W.P.10/Rev.2 and Corr.2-5). As to the settlement of disputes relating to that issue, his delegation reiterated that it could not accept the obligation to submit to a compulsory procedure. His delegation could not imagine a comprehensive convention on the law of the sea without rules on criteria for delimitation and it earnestly hoped that a generally acceptable formula would be found as soon as possible.

17. With regard to matters before the Third Committee, which had been the most successful of the committees, his delegation felt that the extremely delicate compromise on Parts XII, XIII and XIV should be maintained.

18. His delegation attached considerable significance to article 82 on payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles. In its view, the rates of contribution therein specified were much too low.

19. On the régime of islands and enclosed or semi-enclosed seas, his delegation endorsed the provisions of articles 121 and 122, although it was still of the view that articles 122 and 123 were unnecessary. It was his understanding that article 123 on the co-operation of States bordering enclosed or semi-enclosed seas did not purport to impose strict legal obligations on those States. Any other construction would be totally unacceptable to his delegation.

20. He commended the exhaustive work of the informal plenary conference on the settlement of disputes (A/CONF.62/L.59), final clauses (A/CONF.62/L.60) and general provisions (A/CONF.62/L.58). In view of the controversial nature of certain issues relating to the final clauses, it was gratifying to note that consensus had been achieved on a number of points. He expressed support for the provision prohibiting reservations to the convention with certain exceptions. An important convention like the convention on the law of the sea should not be disturbed by unbridled reservations.

21. On the question of the settlement of disputes, his delegation supported the structure of Part X. As to the substance of the matter, his delegation attached special significance to article 298, in particular paragraph (a) (ii), which provided that submission of disputes to compulsory settlement procedure would take place by mutual consent of the parties. His delegation also considered article 298 *bis* a useful affirmation of the principle of settlement of disputes by mutual consent.

22. In conclusion, he felt that the present session had been a success and expressed the hope that the third revision would serve as a basis for the conclusion of the work of the Conference.

23. Mrs. RODRIGUES (Mozambique) said that the Conference constituted a step towards peace, since it was aimed at adopting a legal instrument which entailed the total rejection of any action based on force; it also heralded the implementation of a new order to govern the oceans, guided by the principles of justice and equity.

24. Following the proclamation of its independence, the People's Republic of Mozambique had declared a 12-mile territorial sea and a 200-mile exclusive economic zone. The purpose of that measure had been to protect the legitimate interests of her country's people, for whom the existing marine resources were important for national development and economic reconstruction. Her country had nevertheless refrained from taking any measures on a certain number of controversial issues in view of the negotiations taking place at the present Conference.

25. The importance attached by Africa to the present stage of the negotiations and to the future convention was well reflected in the declaration adopted at Freetown (A/CONF.62/104) and in other relevant declarations or resolutions by the Organization of African Unity. One of the most important points in those declarations was the rejection of any voting system in the Council based on the principle of a veto, on collective voting or on weighted voting. The most recent formula on voting procedure put forward by the co-ordinators of the Group of 21 could possibly result in inefficiency. The consensus formula in the new proposal could in fact be extended in the future to issues other than those referred to in article 161, paragraph 7 (d). For that reason, her delegation could not endorse it and believed that the text should be improved. Article 162 her delegation could endorse as a compromise text.

26. The transfer of technology remained one of the conditions for acceptance of the parallel system as a provisional arrangement. The definition of technology should cover the technology for processing minerals as well and there should be no time-limit for the purpose of transfer.

27. The imposition of a moratorium would certainly make it possible to accelerate the work of the review conference. She accordingly suggested that the Collegium should make provision for a moratorium in the third revision.

28. It was essential that the system of exploration and exploitation to be introduced should not widen the gap separating the industrialized from the developing countries. Accordingly, the exploration of the common heritage of mankind should not harm land-based producers. A practical and fair system of compensation should not constitute a heavy burden on the revenues of the Authority.

29. Turning to Second Committee matters, her delegation considered that in the exclusive economic zone the coastal State should exercise sovereign rights over natural resources. Regarding the important question of the limitation of maritime boundaries, her delegation's position was that any delimitation should be effected through negotiations. Although that matter would be the subject of further discussions, she was convinced that the solution should be found by applying principles of justice and equity. Accordingly, the equidistance or median line constituted one of the methods conducive to equitable solutions.

30. Her delegation did not accept compulsory arbitration for conflicts arising from delimitation. In its view, in all such cases it was of the utmost importance that the parties should refrain from taking any step which might jeopardize the negotiations.

31. As to Third Committee matters, her delegation regarded marine scientific research as of paramount importance for mankind as a whole. However, it could not accept the idea of freedom of research on the continental shelf.

32. To sum up, her delegation considered the compromise texts contained in documents A/CONF.62/C.1/L.28 and Add.1 as a substantial improvement for future negotiations. The outstanding issues should be the subject of further discussion so that solutions could be found for them.

33. In conclusion, she expressed the hope that the assurances given by the United States regarding unilateral legislation would be honoured and that other States would refrain from adopting such legislation on the exploration and exploitation of the deep-sea bed.

34. Mr. CALDEIRA MARQUES (Cape Verde) expressed the hope that, within the shortest possible time, the Conference

would formulate a convention on the law of the sea for the whole of the international community and not a series of small conventions for a few countries alone. Clearly, the future convention could not be perfect but it was better to have the convention that was feasible in the present circumstances rather than nothing at all or a series of mini-conventions.

35. His delegation had doubts regarding the soundness of the solution embodied in article 161, paragraph 7 (d), because unfortunately, when there was a conflict of interest, it was always difficult to arrive at a consensus. His delegation, however, hoped that practice, based on good faith and a genuine political will to ensure the progress of the Authority, would in due course provide just solutions which took into account the interests of the developing countries and thereby allayed their fears.

36. With regard to the status of the exclusive economic zone, his delegation hoped that there would no longer be any contradiction between the relevant articles in Part V and those in Part XII once the third revision was issued.

37. His delegation supported, as it had always done, the proposal made by the delegation of Ecuador concerning oceanic archipelagos (C.2/Informal Meeting/47). It welcomed the endorsement by the Conference of the principle of the protection of archaeological objects.

38. Referring to the whole package of delimitation criteria, interim measures and settlement of disputes, his delegation considered that delimitation must obey objective and well-defined criteria. It was, however, prepared to accept the compromise formula contained in the second revision of the negotiating text.

39. With regard to the innocent passage of foreign warships through the territorial sea, his delegation believed that such passage must be notified in advance to the coastal State, as indicated by existing international practice.

40. On the question of the conservation of fish stocks under the provisions of article 63, his delegation believed that those provisions must be strengthened in every possible way in order to prevent any uncontrolled and selfish depletion of stocks.

41. His delegation supported the Yugoslav proposal on the subject of straits (C.2/Informal Meeting/2/Rev.2) and the Romanian proposal regarding article 70 (C.2/Informal Meeting/51).

42. He expressed the hope that duly recognized national liberation movements would be permitted to become parties to the convention.

43. Lastly, he wished to draw attention to the efforts being made by the Portuguese-language countries to produce a Portuguese version of the informal composite negotiating text which might in due course become an official document.

44. Mr. GÓMEZ ROBLEDO (Mexico) welcomed the approval by consensus of his delegation's proposal for the inclusion of a clause relating to good faith and the abuse of rights. His delegation had always believed in the need for such a clause in order to balance the rights, powers and freedom accorded to the various parties concerned under the convention. Another constructive innovation in the same chapter of general provisions was the introduction of the concept of *jus cogens* as applied to the basic rule of the common heritage of mankind embodied in article 136. That position was irreversible and he could not conceive of its being derogated from in any way or its being the subject of an agreement to the contrary.

45. Turning to First Committee matters, he expressed the hope that the parallel system of exploitation of the resources of the Area would constitute the most appropriate means of ensuring for humanity the optimum utilization and protection of its common heritage. The review conference would provide an excellent opportunity of ascertaining whether that had been the case, and of taking appropriate measures. Unfortunately, some unsatisfactory provisions on the question of the transfer of technology included in the text enabled contractors to evade their obligation of transferring technology whenever they had acquired it on onerous terms. In addition, his delegation considered that the definition of technology should include the processing stage.

46. With regard to the final clauses, his delegation found satisfactory the compromise texts proposed by the group of legal experts on final clauses and urged that they should be included in the third revision.

47. While his delegation thus found adequate the draft articles contained in documents FC/21/Rev.1 and Add.1, it wished to put forward some constructive suggestions. First, with regard to article 303, he urged that the reference to "exceptions" should be dropped; there was no basis for treating exceptions as legally on a par with reservations. The use of that term introduced an unnecessary element of confusion.

48. His delegation felt that although the prohibition of reservations constituted a limitation of the sovereignty of States, it was necessary to assert the political will of those same States which, precisely in the exercise of their sovereignty, wished to ensure the uniformity of application, and universal observance, of the new international law of the sea.

49. In the same context, his delegation regretted the deletion from article 310 (on denunciation) of the original provision which enabled States to become parties to the convention for a minimum period of five years from its entry into force. It was his delegation's belief that that type of provision would have attracted a greater number of ratifications and accessions to the convention.

50. On the question of the settlement of disputes, the maximum concession acceptable to his delegation was the acceptance of compulsory conciliation in respect of specific types of dispute. His delegation therefore welcomed the rearrangement of Part XV, with its threefold structure: first, voluntary procedures; secondly, compulsory dispute settlement procedures entailing a binding decision; and thirdly, limitations and optional exceptions.

51. He now wished to turn to a matter which his delegation considered of vital importance, namely the character of the text that would emerge from the current session. That text was a body of legal rules which constituted an important contribution to the maintenance of peace, justice and progress in the world. In that context, his delegation welcomed the fact that the negotiations which had taken place, combined with the practice of an ever-increasing number of States, had consolidated the existence and content of the legal concept of the exclusive economic zone.

52. After its arduous and prolonged work over so many years, the Conference could be considered as having completed all the stages of negotiation specified in the 54th meeting of the Bureau. His delegation accordingly believed that the third revision must now be considered not as a "negotiating" text but rather as a "negotiated" text, which was of a very different political character. He was not so much concerned with the title to be given to the document as with the fact that delegations and Governments should acknowledge its negotiated character, except, of course, for those provisions which were still to be negotiated at the next session and which the plenary Conference should enumerate clearly, in order to avoid any subsequent discussion of the subject.

53. The negotiated text contained a large number of compromise formulae which represented a delicate balance. It should be borne in mind that acceptable solutions had been found for certain topics which only three weeks before had seemed non-negotiable. It was therefore appropriate to strengthen those solutions rather than give the impression that they were still capable of being changed with regard to substance.

54. His country reiterated its view that the United States legislation of 28 June 1980 in the matter of licences for the unilateral conduct of activities in the international area constituted a violation of international law because it contravened the principle of the common heritage of mankind. He expressed regret at the fact that such legislation should have been enacted precisely at a time when it had the effect of exerting undesirable pressures upon the Conference at the most critical stage of the negotiations.

55. Mr. PASQUIER (Nicaragua) said that he shared the views

of the many delegations which had strongly condemned all unilateral measures for the appropriation of the sea-bed. The principle of the common heritage of mankind enshrined in General Assembly resolution 2749 (XXV) stemmed from the collective international conscience. Moreover, in accordance with that principle it was incumbent upon the developing countries to make efforts to participate in oceanographic technology. In that context, the convention should provide, as a corollary of international democracy, for the transfer of technology, for scientific co-operation and for the dissemination of the results of submarine research. Oceanographic technology should be regarded as an integral part of the heritage of mankind, since it was capable of bringing about a redistribution of economic power.

56. His delegation was satisfied with the proposed scheme for the settlement of disputes; the system of compulsory conciliation constituted a well-balanced solution.

57. With regard to the reservations clause (art. 303), his delegation had made known its position at the appropriate time; it wished to reaffirm at the present stage that, in its view, reservations could basically be prohibited only when all the parties were in agreement on all questions. That assertion logically led to consideration of the meaning and scope of consensus: for consensus to be viable, it was necessary to start from the premise that the present Conference should try not to consolidate allegedly established positions, but rather to introduce a new order which would benefit all countries in an equal manner.

58. His delegation was completely dissatisfied with the terms of paragraph 1 of articles 74 and 83. Like the other sponsors of document NG7/10/Rev.2, it believed that those provisions contained irregularities of substance and of form. With regard to substance, they were at variance with the opinions of the highest legal authorities and with the relevant case-law. With regard to form, they were not in order because they had been incorporated in the second revision without having been genuinely negotiated. For those reasons, his delegation could not support their inclusion in the third revision simply in the form in which they stood in the second revision. The paragraphs in question should be left blank in the third revision because at the present stage they were not the subject of consensus.

59. Lastly, international conscience recognized that peoples constituted authentic subjects of contemporary international law. Accordingly, his delegation supported the accession to the convention of national liberation movements. It was natural for his delegation to take that stand since its Government of national reconstruction had emerged precisely from such a movement.

60. Mr. AL-SUWEIDI (United Arab Emirates) thanked the President and the chairmen of the main committees for their devoted efforts. Those efforts would result in a comprehensive convention which would serve as the basis for a new international legal order for the benefit of mankind as a whole and would implement the principle of the common heritage of mankind enshrined in General Assembly resolution 2749 (XXV). That development could be regarded as a major step forward in the progress of contemporary international law, the effects of which would be felt both now and in the future.

61. With regard to the matters before the First Committee, his delegation was gratified at the tangible progress achieved on a number of thorny issues, progress which was bound to have positive effects. On the issue of the powers of the organs of the Authority, he found that the present proposal gave unduly broad powers to the Council. In his delegation's view, the new powers to be conferred on the Council should not encroach upon the competence of the Assembly. It was essential to strike a balance between the powers of those two organs.

62. Despite those doubts, his delegation was nevertheless prepared to support the proposed new system, which had been endorsed by the Group of 77. It was prepared to leave article 140 as it stood, particularly the provision on special treatment in the interests of developing countries, of Territories which had not yet acceded to independence, and of other non-self-governing Territories within the meaning of General Assembly resolution 1514 (XV) and subsequent relevant resolutions.

63. On Second Committee matters, his delegation endorsed the proposal contained in document C.2/Informal Meeting/58 to add to article 21 a new subparagraph setting forth the right of the coastal State to require prior authorization or notification before the innocent passage of foreign warships through its territorial sea. The same requirement would apply to all foreign nuclear-powered ships and to ships carrying nuclear materials or dangerous or potentially harmful cargoes.

64. Regarding the provisions on the continental shelf, the representative of Iraq had already stated (135th meeting) the views of the group of Arab States including the United Arab Emirates and the objection of those States to any extension of a coastal State's continental shelf beyond 200 miles. He expressed the hope that negotiations on that subject would continue and that they would result in a consensus.

65. On the delimitation question dealt with in articles 74 and 83 of the second revision, his delegation's position was made clear in document NG7/2/Rev.2. He wished to endorse the arguments already put forward by other sponsors of the proposal contained in that document. At the same time, he believed that the present text of those articles on delimitation—which were the outcome of prolonged negotiations—provided the best available basis on which to work towards a consensus.

66. In that connexion, he stressed the great improvement resulting from the introduction into those articles of a reference to international law—an improvement which would make it possible to strike a balance between the different views that had been expressed on delimitation and on the criteria on which it must be based. Accordingly, his delegation strongly urged that the reference to international law should be maintained in the third revision.

67. The criteria for the delimitation of maritime boundaries between States with opposite or adjacent coasts, the question of interim measures and the provisions on the settlement of disputes constituted three interrelated questions which must be dealt with as a single package. That point had been stressed by the Chairman of negotiating group 7 in his final report at the end of the previous session.¹ The proposals contained in document NG7/2/Rev.2 on delimitation criteria, settlement of disputes and interim measures, respectively, were in line with that approach.

68. The principle of equity—advocated by some as a criterion for delimitation—could not be applied by itself. Disagreement was bound to arise on the interpretation of such a criterion and the parties concerned would have to resort to the settlement of disputes procedure or to third-party determination in order to apply it.

69. He urged that in article 298 a reference should be introduced to the right of every party to recourse to the procedures set forth in Part XV, section 2, if conciliation attempts failed or if it became clear that one of the parties refused conciliation. A provision of that kind would avoid the perpetuation of a dispute in cases where one of the parties was unco-operative and in effect rejected the application of the dispute-settlement procedures embodied in the convention.

70. His delegation also endorsed the suggestion that the dispute-settlement procedures should apply to all disputes and not only to those arising after the entry into force of the convention.

71. The consultations which had taken place on so many issues among regional groups and the Group of 77 had produced constructive results on important questions. He sincerely hoped that those negotiations would lead to a consensus and produce the necessary improvements in the provisions of the second/revision.

72. He expressed his appreciation of the President's strenuous efforts with regard to the final clauses, the general provisions and the provisions on the settlement of disputes. He supported the

suggested articles on those questions, articles which were the outcome of fruitful co-operation among all the participants concerned.

73. That being said, he wished to stress that it was absolutely essential to redraft article 300 of the second revision in such a manner as to specify the right of liberation movements, especially the Palestine Liberation Organization, to accede to the convention pursuant to article 140.

74. Mr. FREER-JIMÉNEZ (Costa Rica) welcomed the incorporation into the negotiating text of the provisions concerning the principle of the utilization of the sea for peaceful purposes which had been sponsored by his delegation, together with those of Peru and other countries. Similarly, he welcomed the incorporation of the principle of good faith with regard to the performance of rights and obligations under the convention, and the recognition of the *jus cogens* character of the rules governing the common heritage of mankind. His delegation considered all those principles as basic and as constituting cornerstones of the new law of the sea.

75. With regard to the final clauses, Costa Rica—which was a party to three of the Geneva Conventions of 1958 on the law of the sea—had reservations regarding the text of article 305: his delegation could not accept the idea that, in respect of States which did not ratify the present convention, the 1958 Conventions should apply, regardless of the fact that the legal régime which now governed the territorial sea, the economic zone and the continental shelf formed part of customary international law and was already binding upon all States, regardless of whether or not they were parties to the 1958 Convention or to the present convention.

76. Turning to First Committee matters, his delegation considered that the text submitted by the co-ordinators for Part XI and annexes III and IV provided the best possible basis for reaching a consensus. Although his delegation could suggest certain improvements, it preferred to support that text because it realized that it was the result of difficult negotiations.

77. With regard to Second Committee matters, his delegation had been glad to sponsor an amendment to article 63 (C.2/Informal Meeting/54/Rev.1). It was not the intention of the coastal States to extend their jurisdiction beyond 200 miles—as they had sometimes been wrongly accused of doing—but those States were concerned about overfishing in the adjacent areas of the high seas, a practice which was harmful to the interests of all States whose nationals fished in those areas. The provision in question was simply an application of the principle already embodied in article 117, which imposed upon States the obligation to adopt measures for the conservation of the living resources of the high seas.

78. The fact that it had not been possible to reach a consensus on the question of the delimitation of maritime boundaries of States with opposite or adjacent coasts should be a matter of serious concern for the international community. It was essential to devise a text based on clearly defined and objective criteria. In his view, the concept of equity should serve to correct the defects of unfair delimitation which might result from the application of other principles, but that equity could not constitute the only—or the main—criterion of delimitation because, by its very nature, equity was a purely formal principle which must be associated with other geographical elements in order to yield a practical solution. So long, however, as no better formula could be found, his delegation would continue to support the wording suggested by the Chairman of negotiating group 7 for articles 74 and 83.

79. He welcomed the completion of the work of the Third Committee and expressed the hope that with a few drafting changes the provisions produced by that Committee could be incorporated in the third revision.

80. Mr. NANDAN (Fiji) said that the negotiations held throughout the past years had established that the international community was concerned just as much with the problems of big States as with the problems of small States, States with extensive

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E81.V.5.), document A/Conf. 62/L.47.

coastlines, transit States, States with navigational interests, land-based mineral producers and prospective sea-bed miners. The emerging draft treaty showed that every interest had been taken into account, if not fully satisfied.

81. His delegation welcomed the fact that the integrity of the legal régime of islands, which was of particular interest to the countries of the South Pacific region, had been largely maintained. The integrity of oceanic islands had not been subordinated to the problems of islands having a special situation that might have some bearing on the question of delimitation of boundaries.

82. His delegation was pleased that the Conference had finally accepted the concept of archipelagic States—a concept which until now had been denied its legitimate place in international law. The entrenchment of that concept in the draft convention reflected appreciation of the fact that groups of oceanic islands had an important economic, social and political interrelationship with the waters that surrounded them. His Government had already given legal force to that concept by enacting laws which were consistent with the negotiating text before the Conference.

83. Turning to the work done during the current session, he observed that the session had been one of the most productive. The First Committee had resolved the difficult question of decision-making in the Council of the Authority. The new compromise proposal on the question of voting in the Council contained in article 171, paragraph 7, appeared to enjoy widespread support. The three-tier voting system was an interesting innovation. The proposal that, in the highest tier, decisions should be adopted by consensus offered the only possible compromise solution.

84. Some delegations had criticized the consensus procedure as equivalent to a veto system. He did not believe that criticism to be justified. The traditional veto was a system of voting in which power was given to a few nations to defeat any substantive proposal by casting a negative vote. The consensus procedure was completely different: it envisaged no voting and was based upon a philosophy deeply rooted in many cultures in the third world, such as those of the Indian sub-continent, Indonesia and the South Pacific. Under that philosophy, people were encouraged to take account of one another's views and interests and to accommodate one another's needs. In his own country and in the South Pacific, it was called the "Pacific way".

85. In the Second Committee, the texts produced at the previous session had been further consolidated and the only improvements still possible would be in the articles dealing with delimitation of boundaries, provided, of course, that there was general agreement, especially among the parties most concerned.

86. The texts produced by the Third Committee also contained further improvements.

87. Important progress had also been achieved with regard to the final clauses, general provisions and settlement of disputes. While his delegation could endorse the outcome of the negotiations on those matters, it found the requirement of 60 ratifications to bring the convention into force undesirable if the new régime of the oceans was to enter into force as soon as possible. That new order had taken over 10 years to negotiate and its entry into force should not be unduly delayed.

88. Notwithstanding those observations, his delegation supported the inclusion in the third revision of all the improvements proposed by the chairmen and co-ordinators. Furthermore, in order to mark the important progress made at the present session, his delegation urged that the new text should be styled "draft convention" with a footnote to indicate that it remained an informal text.

89. He now wished to turn to an important matter which the Conference had not yet discussed or resolved: that of the site of the headquarters of the International Sea-Bed Authority. He wished to reiterate his Government's offer to provide headquarters facilities for the Authority in Fiji, which was close to the area in which most sea-bed mining would take place. At the previous session, it had been agreed that the Conference would de-

cide on that matter by a vote at the appropriate time. Now that most of the substantive questions before the Conference were nearing conclusion, his delegation would be pleased to know when the Conference would take up that matter.

90. Lastly, he wished to draw attention to the proposals made by his delegation and a number of other delegations for the purpose of enabling certain countries in the South Pacific, which had become self-governing under United Nations auspices and had considerable maritime zones, to become parties to the new convention.

91. Mr. BACH BAOUAB (Tunisia) said that his delegation welcomed the interest shown in the needs of the developing countries, which should be taken fully into account.

92. Despite the difficult issues before it, the First Committee had produced constructive results in reconciling divergent interests in a way that satisfied most parties. His delegation wished to comment on some of the articles dealt with in the report of the co-ordinators of the working group of 21 to the First Committee so that its comments could be taken into account by the Collegium in taking a final decision on the amendments to be introduced into the third revision.

93. It would have been preferable to group all the provisions under which questions were to be decided by consensus in article 161, paragraph 7, rather than to single out only three such provisions. It seemed doubtful whether the consensus system was ideal for the administration and exploitation of the common heritage of mankind.

94. With regard to article 162, paragraph 2 (j), his delegation would find it difficult to accept any proposal that gave a greater measure of competence to the Council than to the Assembly. He therefore urged that the additions to that paragraph and other relevant paragraphs should be deleted or amended so that they could not be interpreted in that way.

95. In connexion with annex III, he referred to the decisions taken by the Organization of African Unity at Freetown (see A/CONF.62/104) and emphasized the need for clear provisions on the transfer of technology. Steps should be taken to prevent any contractor from shirking his responsibilities in that respect on the pretext that such transfer would be too costly. The transfer of technology, which should apply to all phases of mineral extraction, particularly processing, was a *sine qua non* for the acceptance of a bilateral system. The additional funds should be made available to enable the activities concerned to be undertaken immediately upon the entry into force of the convention.

96. The Second Committee had made no new proposals during the session. It was regrettable that no negotiations had taken place with regard to the continental shelf and its extension beyond the 200-mile limit. His delegation wished to renew its proposal for the holding of such negotiations.

97. It welcomed the generally-acceptable solutions that had been reached, sometimes by consensus, during informal negotiations on the settlement of disputes, final clauses and general provisions, and could agree that the provisions agreed on should be included in the third revision. Referring to the discussions that had taken place concerning the *jus cogens* rule, he said that the principle of the common heritage of mankind was a rule of international law and should therefore be incorporated both in the convention and in unilateral legislation on the exploitation of the Area.

98. On the question of the final clauses, it was regrettable that no final decision had been taken concerning the accession of liberation movements. That question should receive early attention to enable peoples subjected to domination to exercise their right to participate in the common heritage of mankind, as they would have been able to do if they had not been subjected to illegal domination.

99. In view of the progress that had been made, consideration should now be given to methods of application with a view to early entry into force. The United Nations and its Secretariat would have a predominant role to play in that connexion. The at-

tention of the General Assembly should be drawn to the importance of that issue so that the relevant services could be provided to the developing countries.

100. Mr. GUEHI (Ivory Coast) said that the results achieved at the current session offered improved prospects of consensus and the conclusion of the draft convention had been brought closer. His delegation, which had attended the Conference from its inception, attached great importance to the work of the Conference as a means of contributing to a new, more just and more equitable international economic order. The Conference's results during the past few years had been constructive and were being embodied in the domestic legislation of most participating States. The 12-mile limit for the territorial sea and the 200-mile limit for the exclusive economic zone were incorporated in the domestic legislation of the Ivory Coast.

101. His country viewed the law of the sea as a factor of development in all possible fields. The work on final clauses, general provisions and settlement of disputes carried out in the informal plenary conference should be reflected in the third revision. The results were encouraging and formed a sound basis for negotiation. His delegation, however, had difficulties with some provisions in the text drawn up by the co-ordinators of the First Committee, difficulties which should be ironed out at a later stage. First, in connexion with the review conference, his delegation opposed the elimination of the moratorium, which should be reinstated in the third revision. Secondly, the provision on the transfer of technology was unsatisfactory in its present form. Such transfer should concern not only mining technology but also technology for transport, treatment and processing. It must be an integrated operation of unlimited duration. Thirdly, the protection of land-based producers against market infiltration by minerals from the Area was of major importance. A superprofit tax system applicable to contractors should be devised to compensate for the losses suffered by land-based producers as a result of marine production. A distinction should be drawn in that respect between developing-country producers and industrialized-country producers, with a view to applying a fair system of compensation. Article 151, paragraph 4, should be revised to take that suggestion into account.

102. Fourthly, on the question of decision-making by the Council, the consensus procedure provided for in article 161, paragraph 7 (e), was disturbing. In accordance with the resolution adopted by the Organization of African Unity, at Freetown, his delegation wished to reiterate its disagreement with the veto system. The consensus method introduced into the decision-making process was nothing but a disguised veto and could render the Council ineffectual. The prescribed majority procedure therefore appeared to be the best solution.

103. As far as the work of the Second Committee was concerned, the delimitation of the maritime boundaries of States with adjacent or opposite coasts should be agreed between the parties and should be based on the principle of equity, taking account of all the relevant factors. His delegation was convinced that that principle was in the common interest of all who wished to have matters settled equitably without sacrificing their individual interests.

104. On Third Committee matters, his delegation welcomed the fact that the basic negotiations had been completed.

105. His delegation urged States to refrain from adopting unilateral legislation, in order to avoid jeopardizing the convention. It was confident that the reassuring words spoken by some delegations on the subject would have equally reassuring effects for the international community.

Mr. Arias Schreiber (Peru), Vice-President, took the Chair.

106. Mr. PAPADOPOULOS (Cyprus) said that his Government remained firmly committed to the goal of restructuring the law of the sea and exploiting the common heritage of mankind for the benefit of all; the first step towards the goal had been taken in 1967. As an island State, Cyprus was particularly sensitive to the régime of islands and enclosed or semi-enclosed seas.

Whereas the article on the régime of islands offered a minimum solution acceptable to his delegation, the inclusion in the second revision of the negotiating text of the article on enclosed or semi-enclosed seas raised some problems, and his delegation would like Part IX to be deleted from the text for reasons already explained.

107. His delegation welcomed the progress achieved during the current session and, in particular, the developments which had led to the consensus on First Committee matters, as reflected in the package of amendments (A/CONF.62/C.1/L.28 and Add.1). The agreement reached in that respect had served as a catalyst for other hard-core issues before the Conference. All who had worked to bring about that agreement had shown admirable political will, wisdom and courage. His delegation would support the inclusion of the package in the third revision.

108. It also viewed the proposed text for the third revision as a satisfactory compromise as far as Third Committee matters were concerned. It found the general provisions largely acceptable and welcomed, in particular, the acceptance by the Conference of the Greek proposal concerning archaeological and historical objects. The provisions on final clauses (A/CONF.62/L.60) were also largely acceptable to his delegation.

109. It did not, in principle, favour any exceptions or reservations, and believed that they should be kept to a minimum and enumerated in the convention. It agreed with the main thrust of article 303, but would like to see the word "exceptions" deleted.

110. In the light of the explanation given in paragraphs 9 and 10 of document FC/21/Rev.1, his delegation considered that some confusion would be dispelled if exceptions were placed in article 304, as proposed by the representative of Colombia. Article 305 was acceptable as it stood and should be included in the final text.

111. His delegation attached considerable importance to the question of the delimitation of the maritime zones between States with opposite or adjacent coasts, and associated itself with other delegations which considered that the existing text of the third revision offered substantially improved prospects of consensus. Its merit lay in the fact that it had for the first time brought together the two opposing groups, which had conducted their consultations on the basis of that text with a view to reconciling their divergent views. That development reflected a desire on both sides for a viable compromise that would command wide-ranging support. While a new consensus might emerge at the next session, the third revision meanwhile remained the text of the Conference. He emphasized the close connexion between delimitation criteria, interim measures and settlement of disputes. His delegation's final position on the subject would depend on the package deal agreed on those matters; its consistent position on settlement of disputes had favoured compulsory third-party adjudication, entailing a binding decision not only on delimitation matters but also on all other disputes arising from the interpretation or application of the convention.

112. Mr. ENKHSAIKHAN (Mongolia) welcomed the recent progress towards the formulation and adoption by consensus of a comprehensive convention. The package that had emerged had been the result of intensive negotiations held among delegations in a spirit of political will, compromise and mutual accommodation.

113. The new three-tier approach to decision-making, proposed by the First Committee, was a compromise that could not claim to give full satisfaction to all delegations. It nevertheless represented a constructive step towards a solution to the important issue of decision-making procedures by excluding the possibility of unilateral advantage for certain groups of States in the Council, or of discrimination against groups representing different socio-economic systems and geographical regional groups. His delegation could endorse the formula contained in article 161, paragraph 7, for incorporation in the new revision.

114. It should be borne in mind that the formula had not been presented in isolation but as part of an over-all package compris-

ing other important mini-packages on such matters as the composition and competence of the Council, the system of exploration and exploitation of the Area, the production policies of the Authority and the financial arrangements. The entire package should be preserved as an organic unit, since any attempt to alter any of its elements would reopen issues, disturb the balance and destroy the package. His delegation could not support the view of some States that the agreed composition of the Council should be altered.

115. If other delegations could support all the other component elements of the First Committee package, his delegation could too, although it would have preferred to see some improvements in annex III, and specifically in articles 5, 6 and 7 on the transfer of technology and the anti-monopoly clause.

116. Second Committee matters as a whole raised no major difficulties for his delegation. Most of the vital issues had been successfully negotiated and an equitable solution had been found for them. As a land-locked country, however, Mongolia had some difficulties with some provisions of the convention relating to the rights of land-locked and geographically-disadvantaged States to the living resources of the exclusive economic zone of coastal States. It would have liked to see some improvements in certain articles of the present text to take account of the legitimate rights of land-locked and geographically-disadvantaged States, particularly in view of the fact that a large part of the high seas to be known as the exclusive economic zone was to be subject to a specific legal régime heavily favouring some coastal States. In a spirit of compromise, however, his delegation would refrain from pressing for the reopening of the debate on the present provisions of the negotiating text, despite their imperfections. It expected other delegations to exercise similar self-restraint.

117. His delegation was strongly opposed to the attempts of some coastal States to extend their jurisdiction into the high seas on various pretexts, thus infringing the freedom of the high seas. It viewed such action as an attempt to change the balance of the fair and fragile compromise that had been painstakingly negotiated over the past years. It had a similar objection to the attempt of some coastal States to amend the agreed text of article 21, paragraph 1, on the laws and regulations of coastal States relating to innocent passage for all vessels. Any attempt to alter that text would set the Conference back many years and lead to unnecessary dissension.

118. On Third Committee matters, his delegation had noted with satisfaction the successful conclusion of the negotiations on Parts XII, XIII and XIV of the second revision.

119. His delegation could endorse the final provisions as a whole. It welcomed the fact that the overwhelming majority of delegations were against the idea of reservations except for those explicitly allowed by the convention itself. That was one of the major achievements of the session, since reservations would be contrary to the two main principles on which the convention was to be based: consensus and the package deal. His delegation would have no objection to the inclusion in the new revision of the proposed package that had emerged during the current session.

120. His delegation fully supported the statements made by the developing and socialist States against illegal unilateral legislation adopted by certain States in breach of the fundamental principle of the common heritage of mankind proclaimed by the General Assembly in resolution 2749 (XXV). It hoped that the impetus given to the Conference at its ninth session would lead to the early adoption of a comprehensive convention that could contribute to the maintenance and strengthening of international peace and security, the establishment of a new international economic order and justice for all.

121. Mr. DEMBELE (Mali), referring to article 69 concerning the rights of land-locked States in the exclusive economic zone, said that those States should have the right to participate on an equitable basis in the exploitation of the biological resources of the exclusive economic zone, and not on the basis of an appropriate part of the surplus.

122. As far as the problem of delimitation was concerned, his delegation would have been satisfied with any solution that might have been found by a group established for the purpose. Since no such solution had been found, however, it maintained its support for the principle of equity. It consequently found it impossible to support the wording of articles 74 and 83 in the second revision. Nor could it support the vague definition of the continental shelf given in article 76, which it viewed with deep concern. It did not consider that efforts to reach a compromise on that question had been exhausted.

123. The problem of payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles (art. 82) could be solved satisfactorily only when a reasonable solution to the question of the continental shelf had been found. His delegation hoped that the idea of a common heritage fund would be favourably received and would be included in the convention.

124. Part X on the right of access of land-locked States to and from the sea and freedom of transit remained a most vital question for his delegation. While its provisions were not entirely satisfactory, any attempt to amend the present provisions would influence his country's attitude to the future convention.

125. His delegation was concerned about several points in document A/CONF.62/C1/L.28/Add.1, which embodied the results of the negotiations that had just been held. First, article 151 did not favour land-based developing-country producers. Negotiations on that point were required. Secondly, the moratorium requested by a large number of developing countries had been completely disregarded in article 155 concerning the review conference. Thirdly, in article 161 concerning decision-making by the Council, the three-fourths majority had been extended to all key questions. That approach was unsatisfactory to his delegation. Lastly, annex III, article 5, concerning the transfer of technology failed to take account of the concern of the developing countries for the inclusion of the extraction, transport and processing of minerals and training of personnel.

126. His delegation welcomed the progress made in the work of the Third Committee. That work could, however, have been further enhanced by a slight improvement in favour of the land-locked countries in article 254.

127. At the first part of the session his delegation had expressed concern about the provisions of annex II, article 2, paragraph 5, concerning the Commission on the Limits of the Continental Shelf;² those provisions systematically excluded the land-locked and developing countries from the Commission.

128. Mr. ANGONI (Albania) said that the main concern of the Conference on drafting the new convention on the law of the sea was to include clear and unequivocal legal standards to safeguard the rights and interests of sovereign States, particularly with regard to questions directly connected with their independence and national sovereignty. One such question was that of delimitation of territorial waters and the régime governing such waters. That was a sovereign right of States, and his delegation supported the view that each coastal State had the right to delimit its own territorial waters up to a reasonable width, according to the particular geographical, biological, social and economic conditions, and taking account of national sovereignty, its economic interests, the interests of other coastal States and international navigation.

129. Another question for which no just or equitable solution had been found in the second revision of the negotiating text was that of innocent passage. His delegation was certainly not opposed to the principle of free navigation in territorial waters and in straits by merchant ships when it took place in conformity with the legislation and regulations in force in the coastal State and when it did not prejudice the national sovereignty of that State. To extend the application of that concept to warships, however, would constitute a flagrant violation of the well-known principle of international law which recognized the full sover-

² *Ibid.*, 128th meeting.

eignty of coastal States over territorial waters and the superjacent airspace. It was essential for the new convention to make a clear distinction between merchant ships and warships, with an express provision to the effect that the passage of warships in the territorial waters of coastal States could take place only after prior authorization and in strict compliance with the laws and regulations of the coastal State.

130. His delegation maintained the view that the régime of enclosed or semi-enclosed seas and of straits linking such seas together or with other seas or oceans should be established by coastal States without any discrimination or limitation for peaceful countries. On the basis of that position of principle, which had been favourably received by the majority of States participating in the Conference, his delegation was opposed to any amendment of article 36 as it appeared in the text. There could be no automatic right of free passage for all ships or aircraft through straits leading to enclosed or semi-enclosed seas, which were seas of destination and as such could not be used for transit purposes. That was an unquestionable principle recognized in international maritime law. To seek to draw a parallel between enclosed and semi-enclosed areas, on the one hand, and the high seas, on the other, would be to reverse a principle of international maritime law. Questions relating to the régime of enclosed and semi-enclosed seas, and to passage through straits leading to such seas, should be solved through negotiations between the coastal States concerned; that view too had received substantial support in the Conference. His delegation also supported the Romanian proposal with regard to article 70 (C.2/Informal Meeting/51).

131. Article 303 violated the sovereign rights of States and was therefore inadmissible. His delegation strongly supported the principle of reservations as providing a safeguard for the national interests of all States parties.

132. His delegation also had reservations with respect to Part XV, section 2, which based all procedures on obligatory jurisdiction; that constituted a limitation of the sovereign rights of States. It was essential to have the agreement of all parties to any dispute in order to bring that dispute before a court or to arbitration.

133. With regard to First Committee matters, some of the articles as worded in the second revision failed to provide a guarantee of equal rights for all States. His delegation supported the just demands of the overwhelming majority of developing countries with regard to questions relating to the competence and operation of the Council and the Enterprise, voting rights, the production and sale of commodities and other maritime products, the transfer of technology, etc. It was opposed to any manoeuvres by industrialized countries, particularly the major Powers, designed to secure privileged positions for themselves. A typical example was the unilateral legislation recently promulgated by the United States and designed to promote United States industry in the exploitation of deep-sea mineral resources. His delegation strongly condemned that act by the United States Government, which not only sought to seize wealth that belonged to mankind as a whole, but also gave proof that it did not hesitate to violate universally-accepted international norms in order to secure its imperialist ends. He wished to reiterate that the new convention must establish equal rights for all States, taking account first and foremost of the interests of their independent economic and political development.

134. Mr. RATTRAY (Jamaica) said that an assessment of the work of the Conference could not simply be made in terms of national interest. The search for global agreement had been characterized by the sacrifice of a measure of nationalism to internationalism. That had been a painful process particularly for developing countries, but it was often essential for idealism to come to terms with reality. It was impossible to solve all the problems of future generations; the present challenge was to make a good beginning.

135. In evaluating the second revision of the negotiating text and the results of the negotiations that had been conducted, it

was essential to bear in mind that the mandate of the Conference was to produce a comprehensive convention on all issues concerning the law of the sea, taking into account their interrelated nature and the need to arrive at an acceptable package of proposals. It was necessary, in the search for general agreement, to determine the acceptability of the package as a whole, rather than to pass punctilious judgement on its individual constituent elements.

136. With regard to the First Committee package, and in particular the proposals in the report of the co-ordinators of the working group of 21, debits should be balanced against credits. On the credit side, there had been considerable improvement in the provisions regarding transfer of technology, particularly in annex III, article 5, paragraph 3 (c), which related to the undertaking by the operator to acquire a legally binding and enforceable right to transfer third-party technology to the Enterprise, and annex III, article 5, paragraph 7, regarding the period during which the obligation to transfer technology might be invoked. It was still necessary to ensure that the guarantees in respect of the transfer of technology would be adequate to serve the basic purpose of promoting a viable Enterprise on a continuing basis as an essential element of the parallel system.

137. A further point on the credit side was the recognition that the concept of the benefit of mankind as a whole must extend to the peoples who had not yet obtained independence or other self-governing status, as provided for in article 140.

138. The three-tier approach to the decision-making mechanisms of the Council was an attempt to reconcile the principle of the sovereign equality of all States with the reality of interests to be accommodated in matters affected by decisions of the Council. While it was possible to disagree with the internal allocation of some subjects to certain categories, the will of the international community to liberate itself from domination by the powerful had indisputably been asserted.

139. There were benefits and drawbacks in the streamlined parallel system. On the one hand, the right of access of qualified applicants was now largely automatic, and subject only to production authorization. On the other hand, the Enterprise was yet to be fully guaranteed the resources necessary to exploit its first mine site. The surest guarantee would be that of extensive ratification, particularly by the industrialized countries, which would be the major contributors. The problem of a possible shortfall posed a real threat to the implementation of the parallel system. The fact that the solution of the problem was to depend on a consensus decision of the Assembly might be an unnecessarily high price to pay for a system that was based on the assumption that the operations of the Enterprise would begin at the same time as those of States and State-sponsored entities. The appropriateness of the consensus régime should be re-examined at the next session.

140. In keeping with the decision of the Group of 77, his delegation would have no objection to the incorporation of the package proposals of the working group of 21 in the third revision of the text.

141. With regard to the work of the Second Committee, the concept of an exclusive economic zone was possibly the most important development in the law of the sea relating to the limits of national jurisdiction since the 1945 Truman declaration on the continental shelf. His delegation had participated actively in the formulation of an agreement that sought to balance the rights and duties of the State within the exclusive economic zone against the corresponding rights and duties of other States and of the international community.

142. The right of a coastal State to establish an economic zone and the rights and duties of other States within the zone were now generally accepted. Articles 69 and 70 were important in that respect. His delegation hoped that an acceptable solution could be found to the problem of geographically-disadvantaged States in regions and subregions poor in living resources.

143. His delegation regretted that agreement had not yet been reached on the vital and sensitive issue of the delimitation of the

exclusive economic zone or continental shelf between States with opposite or adjacent coasts. It was, however, encouraging to note that negotiations among the most interested parties were continuing. His delegation was confident that a generally acceptable agreement would emerge from such negotiations.

144. While it could accept the coastal State's sovereign rights over the continental shelf in an area beyond 200 miles in which the coastal State would share the revenue from its exploitation with the Authority, his delegation felt that the percentage contribution by coastal States to the Authority could be greater than that provided for in article 82.

145. Turning to the general provisions relating to the Area and its resources, the common heritage of mankind and *jus cogens*, he said that the single most important development in the general law of the sea during the current century was indisputably the 1970 United Nations Declaration of Principles (resolution 2749(XXV)), which established that the area beyond national jurisdiction constituted the common heritage of mankind. His delegation had three points to make concerning the principle of the common heritage of mankind: firstly, the 1970 Declaration was declaratory of general international law; secondly, the principle of the common heritage of mankind was a rule of customary international law; and thirdly, the principle of the common heritage of mankind constituted *jus cogens*, i.e. a peremptory norm of general international law from which no derogation was permitted and which could consequently be modified only by a subsequent norm of general international law having the same character.

146. It was the task of the Conference to give effect to that important principle. It was a matter of deep regret to his delegation that the Conference had not yet been able to state clearly and unequivocally that the principle of the common heritage of mankind constituted *jus cogens*.

147. The original Chilean proposal on the subject was preferable to the compromise formula which, while merely prohibiting amendments to article 136, was to become a paragraph of the article on the final clauses on the relationship to other conventions and international agreements. Under the doctrine of *jus cogens*, not only treaties which were in breach of a peremptory norm, but also unilateral acts which contravened such a norm, were illegal, null and void. Unilateral action in relation to the Area and its resources was destructive and subversive of the principle of the common heritage of mankind. It was regrettable that some States had taken such action, particularly when the Conference was on the verge of success.

148. The general provision that a State party was not obliged to supply information the disclosure of which was contrary to the essential interests of security was open to abuse. His delegation wished to sound a note of caution in that respect, despite the understanding (see A/CONF.62/L.58) that the provision was not intended to detract from the obligations under the present convention concerning the transfer of technology and marine scientific research or the obligations concerning the settlement of disputes relating to those matters. The exclusive reference to those particular obligations might be interpreted as meaning that the provision could detract from obligations not mentioned in the understanding.

149. Although substantial progress had been made at the current session, a number of matters remained to be solved and a number of adjustments would have to be made in order to preserve the delicate balance necessary to maintain the integrity of the package. There was no perfect solution in the world of compromise. If the next session was to succeed, it must be accepted that the type of negotiations conducted in the past on hard-core issues could not be perpetuated. The developing countries had made major concessions in arriving at the compromise package, and the time had come for the industrialized countries to make a final gesture.

150. His delegation was confident that the widespread support for Jamaica as the site of the international sea-bed Authority would also be expressed in the final communication in the form

of a decision of the Conference, in accordance with the procedure adopted during the first part of the Conference.

Mr. Djatal (Indonesia), Vice-President, took the Chair.

151. Mr. HAHM (Republic of Korea) said, with regard to First Committee matters, that his delegation welcomed the new compromise formula on decision-making procedures in the Council based on the three-tier voting system, as set out in the proposals by the co-ordinators of working group 21. He commended the spirit of compromise shown by all delegations in achieving a breakthrough on a problem that was crucial to the success of the Conference. The consensus method as a working rule applicable to particularly sensitive issues seemed to offer a reasonable basis for compromise and balanced the interests of the States and groups of States concerned. However, safeguard measures must still be devised in order to ensure that the consensus mechanism was not used to paralyze the functioning of the Council.

152. His delegation had remained silent during discussions on the composition of the Council at the current session, hoping that the negotiations between land-based producer countries and industrialized countries would be successful. Although the results of the negotiations failed to give sufficient importance to the interests of developing consumer countries that were heavily dependent on imported mineral resources, his delegation would not obstruct a consensus on the issue by insisting on that point.

153. His delegation expressed satisfaction with the adjustment made to article 155, paragraph 4. The addition of the words "changing or modifying" clarified the scope of the amendment to the system of exploration and exploitation.

154. As a member of the Group of 77, his delegation attached great importance to the question of transfer of technology and shared the Group's view that it should be made compulsory not only for the operator but also for the supplier of technology, so that the Enterprise could become a viable entity in every respect. It was encouraging to note that the new version of annex III, article 5, contained an improved formula which could provide a basis for consensus.

155. His delegation was in favour of incorporating all the amendments contained in document A/CONF.62/C.1/L.28/Add.1.

156. Turning to Second Committee matters, he said that, in the light of the impasse on the issue of delimitation of the exclusive economic zone and continental shelf, his delegation felt that the formula contained in articles 74 and 83 of the second revision of the negotiating text was a feasible compromise which could reconcile opposing interests.

157. Another point of vital interest to his delegation was the question of the passage of warships through the territorial sea. His country had already enacted a law requiring prior notification of the passage of foreign warships through its territorial sea because it considered such a requirement to be consistent with the innocent passage régime formulated in the second revision. Article 21 entitled the coastal State to make laws and regulations in conformity not only with the provisions of the convention but also with other rules of international law.

158. His delegation supported the changes in the final clauses reflected in document FC/21/Rev.1/Add.1. He welcomed the fact that the foot-note had been retained in article 303, making it clear that acceptance of the article on reservations and exceptions was conditional upon the adoption of the convention by consensus.

159. His delegation had no objection to the general provisions in document A/CONF.62/L.58, but wished to place on record the fact that the provision designed to protect archaeological objects and objects of historical value should not prejudice the rights of coastal States to such objects located in the sea-bed and subsoil of the continental shelf.

160. The second part of the ninth session constituted a watershed in the progress towards a successful outcome, and with the resolution of most of the outstanding issues he looked forward to the successful conclusion of the Conference in 1981. He hoped that the pending issues would be resolved in the spirit of compro-

mise and mutual accommodation which had prevailed during the current session.

161. Mr. ARIAS SCHREIBER (Peru) said that the proposals submitted by the First Committee were the result of an effort to achieve a compromise between interest groups with previously insoluble differences. His delegation welcomed the fact that both the veto procedure and weighted voting had been eliminated from the decision-making procedures in the Council. Although his delegation would have preferred a two-thirds majority for all substantive questions, it had proved impossible to find a generally acceptable formula for the most sensitive items other than consensus, to which his delegation had objected for practical reasons. He welcomed the reference to recourse to conciliation in article 161, since it would encourage negotiation and discourage abuse of the consensus procedure. That procedure appeared excessive for decisions taken under article 162, paragraph 2 (h), concerning the protection of the interests of land-based producer countries. It was his delegation's understanding that it would not be necessary to have recourse to that paragraph in order to apply the measures in article 151. Furthermore, while the wording of articles 150 and 151 was far from ideal, his delegation trusted that the measures on production control would make it possible to counter the adverse economic effects for the developing countries. On the understanding that the new proposals formed part of an inseparable whole, his delegation supported their inclusion in the third revision as a better basis for reaching a consensus. The Conference would have an opportunity at the tenth session to consider the outstanding issues dealt with by the First Committee, including the membership of the Council, in the light of the final clauses. In order to ensure the success of the negotiations, States must take care to act in good faith, avoiding unilateral action in the Area, since such action would be invalid and could lead to a serious confrontation which would be prejudicial to the interests of mankind as a whole. Neither the Conference nor the international community would accept a *fait accompli*.

162. He welcomed the inclusion of an article in the general provisions prohibiting the use of force or any other action that was incompatible with the principles of international law incorporated in the Charter of the United Nations. However, that general provision must be supplemented by others, as had been suggested on many occasions.

163. At the end of the eighth session in New York, his delegation had expressed regret at the lack of a suitable procedure for negotiations in the Second Committee on certain items on which consensus had not been reached, such as the passage of warships in the territorial sea and other provisions concerning the exclusive economic zone and the high seas. Unfortunately, despite requests by several delegations, the situation had not changed at the current session. There were still problems which must be resolved by negotiation or by formal amendments which might be put to a vote in the Conference. Some delegations seemed to think that a final solution had been found on issues on which they themselves had reached agreement and they refused to consider the difficulties expressed by other delegations, as if the latter had no right to participate in a consensus. Such an approach was unreasonable and extremely dangerous for the Conference.

164. Where a specific agreement on the delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts did not exist or where there were no special circumstances or historic rights recognized by the parties, the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution.

165. His delegation considered that negotiations on matters dealt with by the Third Committee had ended and that only minor adjustments were now needed to certain provisions which were still causing difficulty.

166. The final clauses introduced by the President reflected the result of a compromise which appeared generally acceptable, but agreement must be reached on the question of reservations and exceptions and the participation of bodies which were not States,

including intergovernmental subregional organizations concerned with matters covered by the convention. There were other questions outstanding, such as the membership and functions of the Preparatory Commission, and the work of the Drafting Committee to harmonize the various language versions of the text and improve the style, without changing the substance.

167. Sooner or later the Conference would have to consider the follow-up to its work. The Secretary-General would be requested to assist the developing countries in strengthening their capacity to exercise their rights and in fulfilling their obligations under the future convention. It would also be necessary to co-ordinate the activities of the competent United Nations agencies and organizations so as to ensure uniform implementation of the convention in their work. To those ends, the Conference should recommend that the General Assembly adopt measures of co-operation and assistance in accordance with the means available to the United Nations.

168. His country's new Government would consider the text as a whole in due course and would express its views on it at the next session. The negotiating text was not a final version and was subject to amendment by participating States in accordance with the rules of procedure of the Conference. His delegation trusted that the convention would be adopted by consensus, but that would depend, in the last analysis, on the attitude of other delegations in seeking a reasonable solution to the few outstanding problems.

Mr. Akinjide (Nigeria), Vice-President, took the Chair.

169. Mr. SAKER (Syrian Arab Republic) welcomed the progress made during the current session. His delegation had no objection to articles 160 and 162 on the composition of the Council, voting procedures and the powers and functions attributed to the Council, although Article 162, paragraph 7(c), could have been made more precise by transferring some of the questions covered therein to subparagraph (b), thereby ensuring that most decisions were taken by a two-thirds majority.

170. With regard to article 140 on the sharing of benefits, he felt that making the benefits accruing to peoples who had not yet gained full independence dependent on a recommendation by consensus in the Council would have the effect of paralysing the activities provided for in that article. The decision should have been left to the Assembly or be subject to a two-thirds majority. Article 162, paragraph 2 (j), was part of the comprehensive package, but his delegation would have preferred plans of action to be referred to the Council and not to the Legal and Technical Commission.

171. In his delegation's view the text of paragraph 1 of articles 74 and 83 of the second revision should not be included in the new revision, because, according to the principles adopted by the International Court of Justice, the median line would not necessarily provide a just solution.

172. The continental shelf should not be extended too far since that would reduce the common heritage of mankind. His delegation agreed to a 200-mile limit to the continental shelf but felt that flexibility should be maintained, provided the payments and contributions for exploitation of the continental shelf beyond that limit were increased. Article 82, paragraph 4, should be amended to enable peoples who had not yet achieved independence to benefit from the contributions payable for exploitation beyond the 200-mile limit.

173. His delegation supported the proposal (C.2/Informal Meeting/58) for the introduction of a new subparagraph (b) in article 21, paragraph 1, which would make the passage of warships through the territorial sea subject to prior notice and authorization. He was surprised that the current session had not given sufficient attention to that important subject.

174. His delegation had two reservations concerning the final clauses. First, accession should be open to the national liberation organizations recognized by the United Nations and regional organizations if the former organizations were not to be deprived of their rights under the convention. Secondly, reservations should

be allowed in respect of those articles which had implications for the sovereignty of States and their vital continental and marine interests. Paragraph 2 of the transitional arrangements should be amended to allow non-independent peoples to enjoy their rights.

175. His delegation was adamantly opposed to unilateral legislation concerning the exploration or exploitation of the common heritage of mankind, and objected to any bilateral arrangements which might affect the rights of a third party, such as the Washington agreement and the Camp David agreement, which violated the rights of Arab States.

176. In his delegation's view, the current text did not give sufficient importance to the geographical, economic and political disadvantages of certain countries and should be amended accordingly. Lastly, Annex III, article 5, on the transfer of technology did not meet the aspirations of the developing countries. The transfer of technology should cover all areas of work by the Enterprise, particularly those involving industrialization.

177. Mr. VERHAEGEN (Belgium) welcomed the progress made during the current session, but regretted that his delegation had been unable to participate sufficiently in the consultations, which had frequently been too restricted.

178. His delegation was concerned about the consequences of the proposal for the limitation of production in article 150, paragraph 2 in document A/CONF.62/C.1/L.28/Add.1, because it might compromise the entire exploration and exploitation system devised by the Conference over the years. The production control formula which would benefit only 20 or so countries, both industrialized and developing, of the 160 members of the international community would make it possible to exploit from 5 to 14 ocean mine sites during the first 25 years of application of the convention. Many national Parliaments might be reluctant to ratify a convention which provided for the creation of a universal international body if its only task was to organize and control the activities of some dozen mine sites, particularly since the financial contribution required of States in the text were very high.

179. He was pleased to note that the drafting of some subparagraphs of article 150 had been improved, but subparagraph (d) needed further revision. His delegation could not accept the idea that the production of minerals derived from the Area would merely supplement land-based production. Both marine and land-based minerals should be treated on the same footing.

180. His delegation welcomed the fact that agreement had been reached on the decision-making procedures in the Council as set out in article 161. However, the membership of the Council must be amended to make it more representative. The argument advanced by the medium-sized industrial States was understandable and their views deserved attention.

181. His delegation had already stated on numerous occasions that it supported the transfer of technology to the Enterprise under fair marketing conditions, but the articles in annex III on the subject were not entirely satisfactory. Caution should always be exercised with regard to financial assessments prior to industrial investment, in view of the margin of error and industrial and marketing risks involved. However, Belgian experts had concluded that the companies concerned would be unable to continue their activities for the exploitation of marine mineral resources if they were subjected to the financial constraints imposed in annex III, article 13. Perhaps other experts had arrived at more optimistic conclusions, but even if they were right, the financial obligations to the Authority must not discourage from that new field of activity serious applicants who had already proved their technical ability to exploit the sea-bed. The level of payments to the Authority should be revised taking that point into account, and the charges referred to in the above-mentioned article should be reduced.

182. The funding of the Enterprise would be considered as the price to be paid in order to benefit from the advantages offered by the convention. His delegation did not wish to commit itself at the present stage, but it could not agree to the idea that States should be requested to provide a blank cheque for the financing of the Enterprise; that was precisely what annex IV, article 11,

proposed, since it did not stipulate the amount of contributions which States might be called upon to pay to the Enterprise. That again might cause the national bodies responsible for ratifying the convention to hesitate. The problem would not be solved by entrusting the preparatory commission with the job of fixing the amount since the commission's proposals were subject to approval by the Council and the Assembly of the Authority. Thus, since the Council and the Assembly could be established only after ratification by a sufficiently large number of States, a vicious circle might be created which could compromise the future of the convention.

183. His delegation was not against publication of a third revision of the negotiating text but could not agree that such a text would be the final text of the convention. The third revision should still be subject to amendment either during the next negotiating session or through a more formal amendment procedure.

184. In the absence of a clause enabling the European Economic Community to become a party to the convention, signature of the convention by Belgium would not be binding upon his country in respect of matters within the competence of the Community.

185. Lastly, his delegation was relying upon the French Language Group of the Drafting Committee to produce a satisfactory French version of the convention.

186. Mr. OMAR (Libyan Arab Jamahiriya) said that the sponsors of document NG7/10/Rev.2 on the delimitation of maritime boundaries between States with adjacent or opposite coasts had indicated that they could not accept the wording of paragraphs 1 of articles 74 and 83 in the second revision, since it was not the result of negotiations and had not met with the broad support which might establish the basis for a consensus, as provided for in document A/CONF.62/62.³ Furthermore, most delegations felt that the text was ambiguous since it used an unusual term, namely, "circumstances prevailing". Considerable efforts had been made to achieve a clear formula that would command wider support. The two interest groups had eventually been able to initiate useful consultations but they had not yet resulted in the drafting of a text. In view of the importance of the matter, his delegation hoped that continued efforts would be made to eliminate the remaining difficulties facing the Conference.

187. He supported the informal proposal in document C.2/Informal Meeting/58 concerning the inclusion of a new subparagraph in article 21, paragraph 1, requiring warships to obtain prior authorization before entering the territorial sea. Such a provision was important for the security of all States, particularly smaller States. It had been evident from the general debate that the proposal was widely supported by the Conference and his delegation hoped that it would be included in the third revision or that there would be a further opportunity for negotiation on that point.

188. His delegation's basic position on the decision-making procedures in the Council was the same as that expressed by the Organization of African Unity, namely, it rejected the system of veto, unanimity or weighted voting. It was not certain that the voting system set out in article 161, paragraph 7, would be effective in facilitating the work of the Council. Nineteen items were subject to a three-fourths majority while only eight were subject to a two-thirds majority, and his delegation considered that situation unbalanced. Furthermore, article 161, paragraph 7 (g), had no governing criteria and its application might lead to arbitrary decisions since any member of the Council could exaggerate the majority needed for a specific issue.

189. The provision in annex III, article 5, on the transfer of technology did not meet the aspirations of the developing countries in supporting the role of the Enterprise. The text should be considerably improved and technology must be understood to cover processing technology as well.

190. Annex IV, article 11, on the financing of the Enterprise

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

was, in his delegation's view, inequitable. The industrialized countries, particularly those most advanced in the exploration and exploitation of the sea-bed beyond the 200-mile limit, should contribute a larger share to the financing of the Enterprise. The present wording of article 76 was prejudicial to the common heritage of mankind and his delegation regretted the negative response to the view expressed by the group of Arab States; even though that view had gained support in the Conference. He endorsed the Iraqi delegation's request that negotiations should be continued on that subject in the Second Committee. His delegation supported the statement by the Group of 77 denouncing the unilateral legislation enacted by the United States for the exploitation of the sea-bed beyond its national jurisdiction. The Conference should, in his delegation's view, issue a statement denouncing any unilateral action which prejudiced the common heritage of mankind.

191. The participation of the national liberation movements in the convention was an important issue, and their accession was considered as an application of the principle of the common heritage of mankind. His delegation hoped that a provision could be included to that effect in the third revision.

192. In conclusion, although his delegation had expressed some dissatisfaction with certain aspects of the text, it welcomed the progress which had already been achieved, and hoped that the international community would be able to devise a just and legal régime for the seas which took into account the problems and aspirations of the developing countries.

193. Mr. CHARRY SAMPER (Colombia) said that his country was among the developing countries which were attempting to defend their interests as actual and potential producers of land-based minerals. Articles 150 and 151 were of fundamental interest to his country, which would begin mass production of nickel in 1982, and was a potential producer of copper, cobalt and manganese. Colombia would face stiffer competition as a result of the entry of marine minerals on the market. The developing countries were dependent to a large extent on investments and technology from the more developed countries for the exploitation of their mineral resources, but in the future priority would probably be given by the developed countries to marine nodules. Obviously, it was difficult to satisfy all States with general formulas, but his delegation had tried to obtain safeguards which would cover all land-based developing-country producers, such as the provision on access to markets and limitation of production. He felt that an additional clause should be included on access to markets to protect land-based developing-country producers against discriminatory economic, commercial and financial practices. The machinery and provisions to protect and assist developing countries in connexion with the adverse economic effects of marine production should be improved and implemented, particularly with regard to certain African countries such as Zambia, Zaire, Zimbabwe and Gabon, and the interests of the small and medium-sized countries in Latin America and Asia should also be taken into account. It was his delegation's understanding that decisions taken under article 162, paragraph 2 (*l*), concerned the protection of developing countries against the adverse economic effects referred to in article 151. Such decisions should be taken by a two-thirds majority in the Council so that there would be no doubt that it was the Assembly which would decide on the system of compensation referred to in article 151, paragraph 4.

194. His delegation considered that one of the most positive aspects of the package was the inclusion of States which were potential producers of the minerals to be derived from the area under Article 161, paragraph 1 (*d*), so that they could defend their interests in respect of marine and sea-bed mining.

195. He would have preferred a voting system for the Council based on a prescribed majority rather than the system adopted, which was as yet untried and on which the fate of the institutions established would depend. Rotation of the members of the Council should be guaranteed by pragmatic arrangements within the various groups. Having made those clarifications, his delegation

was prepared to endorse inclusion in the third revision of the package negotiated by the First Committee.

196. The various texts from the Second Committee appeared to be balanced and it would be dangerous to reopen discussions on issues on which consensus had been reached following very difficult negotiations. If some issues were raised again, Colombia would in turn have to insist on various points on which, in its view, an entirely satisfactory solution had not been found. It would therefore be preferable not to reopen the discussion in order to maintain the balance achieved.

197. With regard to the Third Committee, his delegation welcomed the results obtained on Parts XII, XIII and XIV, which offered better responsibilities for consensus. However, several of the provisions of the new text should be harmonized: for example the foot-note to article 254 should be brought into line with articles 69 and 70, and articles 264, 265 and 296.

198. At the eighth session his delegation had expressed support for the inclusion in the second revision of the proposals of the Chairman of negotiating group 7 on criteria for delimitation, interim measures and the settlement of disputes. During the current session, his delegation had played an active part in the discussions and contacts with the delegations most concerned and had concluded that the current text was the most likely to lead to a consensus, particularly since the reference to international law in the heading was a meeting-point for opposing views. It could not be said that there were two clearly defined camps, those for a new order and those against. International law covered the rules, principles, customs and practices of States which had evolved gradually and the convention must reflect that fact. The recent discussions among the 20 countries most concerned had brought out various points that were important to his delegation. The inclusion of the so-called equitable principles gave rise to problems and there was no consensus on that definition and no provision was made for a third party to settle any dispute. In stipulating that delimitation must be achieved through agreement between the parties rather than a compulsory solution, the text left the parties to their own devices, and their subjective interpretation of a just solution might well lead to a further dispute.

199. Without an arbitrator or binding decisions by a third party, the application of equitable principles to delimitation might lead to solutions that were far from just. His delegation felt that the current text should be maintained since there was no justification for its amendment and no other valid proposal had resulted from the negotiations. His delegation had made every effort to improve the text on two conditions, firstly, that the three elements—delimitation criteria, interim measures and settlement of disputes—should continue to be considered as a package; and secondly, that a serious effort should be made to produce a clear and balanced text, bearing in mind that revision 2 represented not the position of a group of countries which defended the principle of the median or equidistance line, but a compromise reached with the participation of all States, including neutral countries or countries not directly involved. A compromise aimed at securing another consensus could be achieved through negotiations based on the second revision, but there could be no bargaining on the compromise thus reached, which should be maintained in the third revision.

200. His delegation would support the incorporation of the general clauses and final clauses; it had expressed its views during the discussion of those clauses and, depending on the text which appeared in the third revision, some aspects might require further discussion in the plenary Conference. He referred in particular to an improved formula for compulsory recourse to conciliation within the delimitation package. His delegation found the current wording of the clause on reservations acceptable; limited reservations should be allowed in respect of specific articles and his delegation agreed with the statement in document A/CONF.62/L.60 that it should be clearly understood that article 303 did not permit exceptions by any State party to optional exceptions made by any other State party under article 298, paragraph 1 (*a*), and that

that text did not permit of reservations to exceptions or exceptions to reservations.

201. Lastly, the convention should include a generic text authorizing the participation of bodies such as the European Economic Community, the Andean Group and any existing or future

regional groups under two conditions: firstly, that they did not prejudice the purpose of the convention; and secondly that no special advantages contrary to the provisions of the convention were created for them or any of their member States.

The meeting rose at 1.10 p.m.

140th meeting

Wednesday, 27 August 1980, at 3.40 p.m.

President: Mr. H. S. AMERASINGHE

General debate (concluded)

1. Mr. NORMAN (Angola) said that his delegation welcomed the progress achieved at the current session and opposed any attempt to enact unilateral legislation concerning the seas and oceans. With respect to production policies, they should be so designed as to avoid harming the interests of present and potential land-based producers in the developing countries. The provisions concerning compensation should be made more objective and more realistic. The Group of 77 should continue its work on developing more practical systems and giving practical form to the provisions of article 151, paragraph 4. In that connexion, Angola affirmed its solidarity with the brother peoples of Zambia, Zaire and Zimbabwe.

2. With regard to the review conference, it was unfortunate that the moratorium clause had been deleted without being replaced by other provisions intended to ensure respect for the principle of the common heritage of mankind. Thanks to the sacrifices agreed to by the Group of 77, a faintly happy solution had been found for the composition of the Council and the voting system. However, his delegation was not satisfied with the institutionalization of consensus. In its opinion, article 161, paragraph 7 (g), should be more flexible with respect to the required majorities, and it should be specified that the Assembly would have clear supremacy over the Council.

3. The clause concerning transfer of technology should be improved, in the spirit of the resolution adopted by the Organization of African Unity at Freetown (A/CONF.62/104): it should be made clearer and should compel States parties to transfer technology without any time limitation. Angola firmly supported the principle of the common heritage of mankind, which must also apply to peoples who had not yet attained independence.

4. Mr. ALATTYIA (Qatar), referring to the question of decision-making procedure in the Council, said that the member countries of the Group of 77 and the group of Arab States opposed the right of veto, which had the effect of paralysing activities. Decisions concerning the sharing of benefits should be taken by consensus. As for payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles, the words "and of peoples who have not yet attained independence" should be added at the end of article 82, paragraph 4. Article 70 should also be reworded to enable countries with special geographical characteristics to derive greater benefit from the living resources of the sea.

5. With respect to participation in the convention, national liberation organizations recognized by the United Nations, in particular the Palestine Liberation Organization and the intergovernmental regional organizations, should be allowed to accede to it. In the general provisions, the proposal concerning the basic principle of the common heritage of mankind as *jus cogens* was the cornerstone of the future convention. His delegation welcomed the results achieved by consensus and hoped that the Conference would continue its work in the same spirit of conciliation.

6. Mr. DJERMAKOYE (Niger) said that his delegation was closely following the work of the Conference, and especially the

work which directly concerned land-locked developing countries such as the Niger and related to the provisions on the right of transit and access to the sea and the exploitation of the resources of the sea by land-locked and geographically disadvantaged countries (arts. 69, 70, 125 and 254). Although those provisions were wishy-washy in many respects, his delegation accepted them and would oppose any attempt to reopen the debate on those questions which was made with the aim of further diminishing the already modest rights granted to those countries. The Niger endorsed the principle of the common heritage of mankind adopted without objection by the international community in its Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)), and therefore welcomed the presence of article 136 in the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5). It would nevertheless be desirable to supplement that provision by recognizing that the concept of the common heritage of mankind was a preemptory norm of international law and a norm of *jus cogens*, in accordance with the amendment suggested by Chile and the amendment proposed by the Philippines.

7. In view of its attachment to that principle and to the convention as a basic element of the new international economic order, the Niger was seriously concerned about the enactment by certain States of unilateral legislation on the exploitation of marine resources. All the countries participating in the Conference, in particular the industrialized countries, must refrain from following that example, which would jeopardize all the efforts made since the beginning of the Conference. On the other hand, it would be very desirable to create a common heritage fund; such a measure would contribute to efforts to restructure international economic relations and would help to reduce the gap separating the rich from the poor countries.

8. It had already been emphasized that the bulk of sea-bed resources were situated in the exclusive economic zones of coastal States, in other words, within the 200-nautical-mile limit. It therefore seemed meaningless for the common heritage fund to draw solely on income derived from the exploitation of the area beyond that limit. The coastal States should withdraw their objections to the idea of establishing such a fund, in order that it might be put into effect by means of an appropriate provision in the draft convention.

9. It was unfortunate that the Second Committee had held hardly any meetings during that session and that negotiating group 6, which was responsible for questions relating to the definition of the continental shelf and payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles (arts. 76 and 82), had not met, apparently in order to avoid jeopardizing the delicate balance that had been achieved. His delegation was not satisfied with the wording of those two articles and would like them to be improved at the next session.

10. In the opinion of his delegation, the final consensus achieved represented a significant result, which it would not try to undo. Nevertheless, it should be recalled that in their declara-