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148th Plenary meeting

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147th meeting

Friday, 10 April 1981, at 4.30 p.m.

President: Mr. T. T. B. KOH (Singapore)

Organization of the future work of the Conference

1. The PRESIDENT informed the Conference that, with regard to the date of adjournment or suspension of the tenth session, he wished to recommend on behalf of the General Committee that the session should be extended to 24 April 1981, on the understanding that all substantive work would end by 16 April and that the last week would be devoted to meetings of the Drafting Committee and its constituent bodies. If he heard no objection, he would take it that the Conference approved the recommendation.

It was so decided.

2. The PRESIDENT said that he wished to make a number of points regarding the programme of work for the remainder of the session. Firstly, during the first of the two remaining weeks, as much time as possible would be devoted to the work of the Drafting Committee, bearing in mind the need to avoid creating problems for representatives who attended both Drafting Committee meetings and the consultations on the question of the Preparatory Commission. Secondly, certain consultations already under way would continue, notably those on the Preparatory Commission conducted jointly by the Chairman of the First Committee and himself, and those between the two interest groups on delimitation. Thirdly, it would be necessary for the Conference to hold at least one and perhaps two informal meetings to process the recommendations of the Drafting Committee on certain pending matters. Fourthly, the Conference would hold at least two formal sessions to hear reports from the Chairmen of the Committees and from himself if he had anything to report as Chairman of the informal plenary meetings. Finally, the Chairman of the First Committee would undertake consultations regarding the request by the representatives of Zambia and Zaire that the subject of the limitation of production should be pursued.

3. Mr. MAZILU (Romania) said that he fully endorsed the view that it would be necessary to ensure every facility for the plenary Conference to analyse the results achieved, on the basis of reports from the Chairmen of the Committees and from the President as Chairman of informal plenary meetings

on Draft Committee matters. He hoped for comprehensive and precise reports on the views expressed and the stage reached in the work. He believed that every delegation would have ample opportunity to air its views on the work of the Committees.

4. Mr. HAYES (Ireland) said he welcomed the provision of facilities for consultations between the interest groups and shared the hope that they would lead to a resolution of the problem of delimitation, the only key issue identified by the Conference which had not yet been negotiated to a conclusion.

5. Mr. MUKUNA KABONGO (Zaire) expressed the hope that information would be provided at the earliest opportunity on the work programme for the consultations on production limitation.

6. Mr. CHINHENGO (Zimbabwe) expressed the hope that following the planned consultations his delegation would be able to report some progress concerning article 151, paragraph 2 (b) and paragraph 4, of the draft convention, which were of vital concern to his Government.

7. The PRESIDENT informed the Conference that the General Committee had decided to defer until its next meeting consideration of the agenda items relating to the future programme of work of the Conference and the recommendation to the thirty-fifth session of the General Assembly on that programme.

8. He also informed the Conference that in recent weeks he had met frequently with the representatives of the three countries which were candidates to become the seat of the international sea-bed Authority and of the three countries which were candidates to become the seat of the international law of the sea Tribunal. He had also consulted the Chairmen of the regional groups on those two issues. The six candidates had now agreed that the two issues would be taken up for decision by the Conference during the third week of the resumed session. Delegations would thus have sufficient time to consult their Governments and obtain the necessary instructions.

The meeting rose at 4.50 p.m.

148th meeting

Wednesday, 15 April 1981, at 3.30 p.m.

President: Mr. T. T. B. KOH (Singapore)

Organization of work

1. The PRESIDENT announced that, following several meetings of the Chairmen of the three regional groups and the representative of the United States, agreement had been reached on the future programme of work.

Report of the Chairman of the Second Committee

2. Mr. AGUILAR (Venezuela), speaking in his capacity as Chairman of the Second Committee, reported on that Committee's work during the current session.

3. He said that, at the first part of the session, the Second Committee had held four informal meetings which had provided a large number of delegations with the opportunity to

refer to certain questions relating to Parts II to X of the draft convention on the law of the sea (informal text) (A/CONF.62/WP.10/Rev.3 and Corr.1 and 3).

4. Those meetings had been held without an agenda, so that delegations had been free to express their views and to make or reiterate informal suggestions for amendments on all matters within the Committee's competence, with the exception of the problem of the delimitation of the maritime space between States with opposite or adjacent coasts, which was being dealt with by the two groups of countries directly concerned.

5. At the first meeting, it had been clearly established that the aim of the Committee's work was to supplement or improve the draft convention and not to reopen discussion on the basic elements of the agreements already reached. Almost all the informal suggestions which had been considered had already

been submitted to the Committee at previous sessions; nevertheless, a revised version of one of those suggestions had been submitted at the current session.

6. In all, there had been 119 statements, which touched on many of the articles in Parts II to X, although most of the statements had focused on very few issues. One of the questions, a highly controversial one, had given rise to a debate, in the course of which the various positions had been explained in detail and several alternative versions had been suggested. Several delegations had even requested the establishment of a working group or the holding of consultations, with a view to harmonizing the various points of view. That proposal had not, however, been accepted, for want of agreement.

7. The informal suggestion which one delegation had submitted to the Committee for the first time had also been given special attention. That delegation had announced that it would consult other delegations which had expressed interest in the suggestion with a view to submitting to the Committee in due course, for its consideration, a formulation taking into account the comments made on the subject.

8. Delegations interested in some of the informal suggestions made at previous sessions had stated that consultations were continuing for the purpose of working out generally acceptable formulations.

9. In short, it had emerged from the meetings that: firstly, there was a virtual consensus on the fact that it was neither desirable nor practical to reopen discussion on basic Second Committee issues, which, while they did not in all cases represent a consensus, were the formulas that came closest to commanding general agreement and that had been arrived at after lengthy negotiations. Secondly, minor changes designed to supplement, clarify or improve the draft convention could be introduced, provided that they commanded the necessary support and would help to facilitate acceptance of the text by the greatest possible number of delegations. Thirdly, while some draft articles presented difficulties for some delegations, the draft as a whole was acceptable to the great majority. In the opinion of a significant number of delegations, there were actually very few questions that required further negotiation. Finally, he said it was appropriate to recall that, together with the President of the Conference and the Chairman of the Drafting Committee, he had participated in the three informal plenary meetings of the Conference devoted to the consideration and adoption of the recommendations of the Drafting Committee relating to Parts II to X of the draft convention on the law of the sea.

10. Mr. MANANSALA (Philippines), supported by Mr. HUMAIDAN (United Arab Emirates), expressed the view that the report submitted by the Chairman was objective, though brief. Out of a concern for accuracy, the Chairman had perhaps thought it better not to go into the details of the discussions in the Committee or to grapple with the important issues which gave rise to much concern. During the four informal meetings, more than 70 delegations had referred to an informal proposal concerning the innocent passage of warships through the territorial sea of the coastal States, submitted by several delegations, including his own, at the previous session at Geneva (C.2/Informal Meeting/58). Most delegations had expressed support for that proposal, even if there had been some opposition. Consequently, that matter should have been mentioned in the report and, on behalf of the sponsors of the proposal, he expressed his disappointment. However, he noted that it could be discussed at a later stage during a future session of the Conference.

11. Mr. SHEN Weiliang (China) said that he found the report on the work of the Second Committee acceptable. However, while it was true that Parts II to X of the draft convention contained some articles which were the outcome of joint efforts, other articles required improvement, *inter alia*, the wording referred to by the representative of the

Philippines, which had received broad support. He hoped that consultations could take place on the relevant articles with a view to arriving at a generally acceptable text.

12. Mr. SHARMA (Nepal) expressed regret that the report had not dealt with all the problems discussed in the Second Committee. Had the issues been pinpointed, including the question of the Common Heritage Fund, it would have been more helpful. He referred to the proposal (C.2/Informal Meeting/45/Rev.1 and Corr.1) the purpose of which was to improve article 56 of the informal text of the draft convention to enable all countries, even the poorest among them, to share in the resources of the sea-bed on an equal footing.

13. He asked all delegations to study that proposal so that it could be reconsidered at the next session and included in the draft convention, and he requested that, for the time being, the issue should be considered as one which remained pending.

14. Mr. VUKAS (Yugoslavia) said that his delegation would study with special interest the new revised formula for the Common Heritage Fund.

15. He welcomed the suggestion by the Chairman of the Second Committee concerning future opportunities for discussing all of the proposals and questions which were currently being studied in the Drafting Committee but which could not be solved there in a satisfactory way.

16. Mr. de la GUARDIA (Argentina) said that he fully endorsed the view of the Chairman of the Second Committee and of other speakers that there was a consensus, and that discussion should not be reopened on matters involving essential aspects of the negotiations. There were enough threats to the future of the Conference without adding new elements which might prejudice its success.

17. In his delegation's view, two matters required clarification and should be the subject of new negotiations: firstly, the problem of innocent passage of warships in the territorial sea, which a growing number of delegations had brought up at the current session and regarding which he had indicated that he would be prepared to enter into informal consultations. The second matter related to an amendment proposed to article 63 of the draft convention (C.2/Informal Meeting/54/Rev.1) concerning living resources occurring in the exclusive economic zones of two or more coastal States and in an area adjacent to the zone. Since that amendment was aimed at achieving better protection for living resources, its adoption would benefit all the countries of the world. He urged that the matter should likewise be declared pending and that further consultations be held on it in order to respond to the concerns of some delegations.

18. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that the report of the Chairman of the Second Committee indicated that there were currently two categories of provisions in the draft convention: those on which there was a consensus and those which could be viewed as pending, since their formulations remained unacceptable to many delegations and further negotiations on them were necessary. With regard to the second category, he drew attention to the existence of rights that had been exercised by many States in their seas for many years, well before the convening of the current Conference, and that did not violate the rules of international law. The convention must guarantee those rights as well.

19. Since many important proposals which had been strongly supported by various delegations had been submitted, negotiations on those proposals could not be considered completed. During the current session, those proposals had been opposed by several delegations, and there had really been no negotiations during which the sponsors could have explained the terms and scope of their proposals and the parties opposed could have explained the reasons for their rejection. It was to be hoped that at a later stage the delegations concerned could pursue their efforts to formulate texts acceptable to all.

20. Mr. TSHIKALA KAKWAKA (Zaire) said that a number of delegations had expressed their views on articles 62, 69, 70 and 71, concerning the utilization of living resources, the rights of land-locked States, the rights of States with special geographical characteristics and the non-applicability of articles 69 and 70, with a view to harmonizing them, eliminating their fundamental contradictions and improving their presentation. The rights of coastal States should not be diminished; rather, the land-locked States and those with special geographical characteristics should be guaranteed the exercise of the rights accorded to them in the draft convention. If amendments were not made, however, those rights might remain theoretical and hypothetical. With regard to the delimitation of maritime space between States with opposite or adjacent coasts, his delegation fully supported the criterion of equity.

21. Mr. GOERNER (German Democratic Republic) said that the debates at the current session had made it clear that the participants agreed on the majority of the articles of the draft convention worked out by the Second Committee. It was an encouraging sign that there was apparently agreement on the substantive provisions of the draft and on the fact that they must not be renegotiated.

22. All of the amendments proposed at the most recent meetings of the Second Committee had been the subject of close consideration at previous sessions, and neither at those sessions nor at the current one had any of those proposals commanded the support of a majority of participating States. His delegation had voiced strong opposition to the amendment which would restrict the freedom of navigation for all ships (C.2/Informal Meeting/58) and had also opposed proposals designed to assimilate the legal status of the economic zone to that of the territorial sea or to curtail the freedom of fishing in maritime zones adjacent to the economic zone. It was likewise opposed to proposals designed to change the provisions on access to the living resources in the economic zones of coastal States by land-locked and geographically disadvantaged States and to the proposal to restrict the right of coastal States to extend their territorial sea to a maximum breadth of 12 nautical miles.

23. His delegation could not associate itself with the claim that the proposals repeated in recent meetings of the Second Committee did not affect the package of provisions forming the substance of the draft convention. Practically all the provisions were so closely interlinked that any change at the current stage would be bound to alter the package.

24. At the resumed session, work must be concentrated on the still unresolved questions listed in document A/CONF.62/110, which did not allow the reopening of negotiations on matters that had already been definitively settled.

25. Mr. ATAIDE (Portugal) said that his delegation endorsed the report of the Chairman of the Second Committee; even if it could be improved in a few places, it constituted a good summary of all the main points before the Committee and its conclusions were completely balanced.

26. Mr. MAZILU (Romania) recalled that during the discussions of the Second Committee it had been pointed out that the last version of the informal text of the draft convention on the law of the sea contained a broad measure of generally acceptable solutions discussion of which must not be reopened. Nevertheless, his delegation had stated in plenary that there were still several outstanding issues on which negotiations must be continued, bearing in mind the rights, views and interests of all participating States. The discussions in the Second Committee had highlighted the need for such negotiations on certain issues. His delegation remained convinced that the geographically disadvantaged States must be assured of access to the living resources of the coastal States in accordance with the proposal which it had submitted to the Second Committee in document C.2/Informal Meeting/51. It was clear that con-

sultations and negotiations must continue in order to find an equitable solution for such countries.

27. It was equally clear that consensus had not yet been reached on the question of innocent passage of foreign warships through the territorial sea. It was essential that real negotiations be on that exceedingly important question in order to find a solution that would reconcile the interests of all States and that would be consistent with the existing rules of international law. For its part, his delegation was ready to participate actively in the search for acceptable solutions to all outstanding issues and it hoped that all delegations concerned would be equally willing to do so.

28. Mr. LUPINACCI (Uruguay) endorsed the conclusions contained in the report by the Chairman of the Second Committee and felt that it was, indeed, preferable not to reopen the debate on fundamental issues. None the less, a number of non-fundamental provisions which, as the representative of Ecuador had pointed out, had not really been negotiated should be improved. That was true, particularly of the amendment to article 60, paragraph 1, of the informal text presented by Brazil and Uruguay (C.2/Informal Meeting/11) and of the amendments to article 63 presented by his delegation and others (C.2/Informal Meeting/54/Rev.1). He hoped that by means of consultation and real negotiation it would be possible to make the necessary amendments so that consensus could be achieved on those questions.

29. Mr. MHLANGA (Zambia) said that the four meetings devoted to Second Committee matters had been more of a general debate than negotiating meetings. With regard to the breadth of the territorial sea, while a consensus seemed to be emerging on extending it to 12 nautical miles, the same did not apply to extending it beyond that limit by means of the exclusive economic zone or continental shelf. It was therefore essential to continue negotiations on that point at the resumed tenth session of the Conference. Zambia, like other countries, would prefer the zone beyond the 12-nautical-mile limit to be of a regional nature so as to ensure that land-locked States, coastal States and geographically disadvantaged States had access to the natural resources of the zone. Based on the Kampala Declaration (A/CONF.62/23)¹ concerning the equal rights of land-locked and geographically disadvantaged States and those of other States, several delegations, including his own, had submitted draft articles (in document A/CONF.62/C.2/L.97)² on a regional or subregional economic zone. It was therefore essential to have negotiations to arrive at a consensus on Parts V and VI of the text concerning the exclusive economic zone and the continental shelf, bearing in mind the studies in documents of the United Nations concerning the distribution of resources according to the limits of exclusive national jurisdiction.

30. The delegation of Nepal had mentioned a proposal relating to contributions to the common heritage fund (C.2/Informal Meeting/45/Rev.1 and Corr.1) of which Zambia was a sponsor and which aimed at greater justice. His delegation hoped that the outstanding issues could be resolved at the next session by means of discussions between interested groups.

31. Mr. YOLGA (Turkey) recalled that his delegation had submitted a proposal in the Second Committee (C.2/Informal Meeting/23) concerning semi-enclosed seas with special characteristics in cases in which the breadth of the territorial sea was less than 12 nautical miles. Without wishing to reopen discussion on that figure which was already mentioned in article 3 of the draft convention, his delegation wished to draw attention to the difficulties which might arise from application of a general rule to a particular case and urged that the existing

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E.75.V.5).

² *Ibid.*, vol. XII (United Nations publication, Sales No. E.78.V.3).

breadth of the territorial sea should not be changed without the agreement of the bordering States concerned.

32. He fully realized what the Chairman of the Second Committee had been thinking of when preparing his report and why he had preferred not to refer in specific terms to any of the proposals made by delegations and he approved the report as a whole.

33. Mr. UL-HAQUE (Pakistan) welcomed the report submitted by the Chairman of the Second Committee. However, he hoped that the question of innocent passage of warships through the territorial sea, which had been the subject of a proposal sponsored by his delegation and others, would give rise to further consultations and negotiations when the session resumed so that agreement might be reached.

34. Mr. ROSENNE (Israel) said that his delegation did not agree with some of the provisions of articles 109 and 110, concerning unauthorized broadcasting from the high seas and the right of visit respectively, for in its opinion the provisions went too far. He hoped that those questions and the corresponding proposal of his delegation (C.2/Informal Meeting/38) would be the subject of further consideration. His delegation also had other reservations concerning Parts II to X of the text and it reserved the right to express them in greater detail. Finally, his delegations endorsed the proposal concerning the common heritage fund contained in document C.2/Informal Meeting/45/Rev.1 and Corr.1.

35. Mr. POWELL-JONES (United Kingdom) said that his delegation was proposing the amendment of article 60, paragraph 3, on the removal of abandoned or disused installations or structures. The Chairman of the Second Committee had noted that the proposal could attract general support without affecting the structure of the package. The provisions of that proposal, which would ensure the safety of navigation and take into account other lawful uses of the sea, had been widely discussed by all the regional groups and seemed to be uncontroversial. The language had been considered in detail. His delegation was proposing therefore that the second sentence of article 60, paragraph 3, should be replaced by the following text:

“Any installations or structures which are abandoned or disused shall be removed as necessary to ensure the safe navigation of ships, in accordance with generally accepted international standards established by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth and position of any installations or structures not entirely removed.”

36. Mr. CHARRY SAMPER (Colombia) observed that, in his report, the Chairman of the Second Committee had correctly interpreted the results of the informal consultations and that there was no need to reopen the debate on questions which had already been settled. Consultations might, however, be held for instance in working groups, to take into account the views and legitimate interests of all States with a view to reaching a consensus.

37. Mr. ARIAS SCHREIBER (Peru) recalled that, during the debate in the Second Committee, a number of delegations had declared their readiness to accept certain amendments to the proposals contained in the text of the draft convention. In view of the exceptional circumstances surrounding the tenth session, however, other delegations had opposed such negotiations. He hoped that the atmosphere would prove more favourable when the session resumed in the summer and that it would be possible to settle the outstanding issues. His delegation was determined to co-operate in efforts to reach a consensus on the few provisions which had yet to be settled and on the minor drafting changes proposed to the articles on the high seas which had not been considered by either the Second Committee or the Drafting Committee.

38. With regard to the proposal on the financing of the common heritage fund (document C.2/Informal Meeting/45/Rev.1 and Corr.1), he could not see how the proposed amendments could be accepted in their present form when they were supported only by the co-sponsors and a very limited number of other delegations. Any proposal on the financing of the Fund could be accepted only if it was based on contributions from the international sea-bed area or the continental shelf, and not on resources from the exclusive economic zone, over which coastal States exercised the express rights provided for in article 56 which could not be changed. For the same reasons, his delegation could not agree to the suggestions made by the representative of Zaire regarding articles 62, 69, 70 and 71 which had been the subject of lengthy negotiations in the Second Committee and in a special negotiating group. The outcome of those negotiations represented the maximum that was acceptable to all delegations.

39. With regard to the delimitation of the territorial sea, the exclusive economic zone, the continental shelf and the so-called “regional economic zone”, his delegation would have found it easier to see the point of the comments made by the representative of Zambia if they had been made in 1958, or, some of them, at the beginning of 1971. Such suggestions now seemed anachronistic, after all the negotiations that had taken place and in view of the practice that had been established among States over the past 10 years or so.

40. He was astonished at the statement by the representative of the German Democratic Republic that an overwhelming majority of delegations had accepted such provisions as those of articles 21 and 73, when the discussions in the Second Committee had demonstrated quite clearly that fewer than 30 States were refusing to amend those articles or to look for other solutions which would make it possible to reach a consensus.

41. Mr. KOZYREV (Union of Soviet Socialist Republics) expressed deep concern at the fact that, at the current session, some delegations had tried to reopen the debate on questions which had already been settled with the intention of amending to their own advantage numerous important provisions of the draft convention which formed an integral part of the compromise decisions reached on the over-all package. Their intentions had become quite clear when amendments to article 21 on innocent passage through the territorial sea and article 63 on fishing in an area adjacent to the economic zone had been considered.

42. Some delegations were claiming that many delegations wished to amend article 63 but they were forgetting that approximately 60 land-locked or geographically disadvantaged States, backed by a large number of other delegations, were unable to accept the proposals which had been made.

43. The Conference had considered the matter of the innocent passage of all vessels through the territorial sea at numerous sessions and had arrived at a compromise formula which safeguarded both the security interests of coastal States and the interests of international navigation. The actual concept of innocent passage had been explicitly defined and gave the coastal State broad powers to ensure that all States implemented the provisions of that concept. That formula had been incorporated into the informal composite negotiating text in 1975 and had never been amended since.

44. The Second Committee had also considered all the other issues in considerable depth and had drawn up compromise solutions for them. His delegation was therefore opposed to any amendment of the provisions of articles 21 and 63 of the draft convention and of any of the other articles on questions considered by the Second Committee.

45. It was clear from the discussions in the Committee, in which nearly 90 delegations had taken part, that any alteration to the provisions of the draft convention would wipe out all the results already achieved.

46. The Soviet delegation shared the view of the Chairman of the Second Committee that the discussions to which he had referred had confirmed yet again that a consensus had almost been reached in favour of maintaining all the compromise decisions worked out by the Conference after many years of effort.

47. The Soviet delegation was deeply convinced that the Conference could complete its work speedily only if all participants refrained from introducing substantive changes into the draft convention on matters falling within the competence of the Second Committee. For its part, it was ready to withdraw the amendments which it had proposed (C.2/Informal Meeting/17), in particular in respect of article 55 concerning the specific legal régime of the exclusive economic zone, provided that other delegations relinquished the idea of amending the substance of the draft convention.

48. One question had still not been settled—that of the criteria governing the delimitation of the territorial sea. As members were aware, there was a compromise formula on the matter, proposed by the Finnish delegation, which enjoyed relatively wide support, including that of the Soviet delegation. At the previous session, the formula had been rejected both by the group of 29 which defended the principle of equity in the matter of delimitation and by the group of 22 which had proposed a median line as the main criterion. Since then, considerable progress had been made: the views of the two groups had been brought closer together and they would now be ready to support the formula proposed by the Finnish delegation. It was to be hoped that they would succeed in harmonizing their views, which would make it possible to remove that question from the list of problems which must be submitted to further negotiations.

49. Mr. ZEGERS (Chile) agreed with the Chairman of the Second Committee, that care must be taken not to reopen the debate on substantive matters which had already been the subject of negotiations. As for improvements in the text of the draft convention, only those which seemed likely to make it possible to reach a consensus should be contemplated.

50. As the Chairman of the Second Committee had emphasized, only one of the new proposals submitted at the current session had received sizeable support. On the other hand, no agreement had emerged regarding the establishment of a working or negotiating group, because the consultations had shown that the proposed amendments would not improve the chances of arriving at a consensus.

51. The Chilean delegation shared the conclusions of the Chairman of the Second Committee and was sure that the Committee and the Conference would take them into account in the future.

52. Mr. HAN Si Hae (Democratic People's Republic of Korea) said that his delegation very much hoped that consultations would take place, at the resumed tenth session, on the question of the innocent passage of warships in the territorial sea, on the basis of the proposal reproduced in document C.2/Informal Meeting/58, which took into account the interests of coastal States, particularly developing countries.

53. Mr. KIDERLEN (Federal Republic of Germany) commended the report submitted by the Chairman of the Second Committee, which he thought was pertinent and complete.

54. Mr. YANKOV (Bulgaria) said that his delegation, like many others, was convinced that, in order not to call in question the compromise that had been achieved, it was important not to reopen the debate on important questions which had already been the subject of lengthy negotiations, particularly all the aspects of the régime of navigation, including innocent passage in the territorial sea. In that connexion, he referred, in particular, to article 21. That conclusion was, moreover, implicit in the programme of work in document A/CONF.62/BUR.13/Rev.1, which listed the matters left pending to be considered at the current session. The Conference was con-

fronted with enough difficulties of other kinds to make it imperative for it to refrain from reopening the debate on problems on which a consensus had already been achieved.

55. Mr. MAHIOU (Algeria) thought that, at the current stage of the Conference's work, it was hard to do more than seek to improve the provisions of the draft convention as far as possible. Consultations were already under way, and it was to be hoped that they would produce fruitful results. The questions taken up at the meetings of the Second Committee had not been sufficiently debated, and some still called for consultations and negotiations. In the view of the Algerian delegation, the proposal put forward by the delegation of Nepal, on behalf of a number of delegations, in particular, merited serious consideration.

56. The Algerian delegation wished to point out that during the debate in the Second Committee many other issues could have been raised; however, because of the prevailing atmosphere at the current session, sometimes even the threats which had hung over it, some delegations had been obliged to hold back in order to avoid causing additional difficulties. Some provisions, such as those regarding islands, could still be the subject of improvement. Without calling into question the compromise or the provisions generally accepted, it was still possible, through consultations and negotiations, to bring about further improvements.

57. Mr. CHINHENGO (Zimbabwe), referring in particular to paragraph 1 of article 69 on the exploitation of the surplus of the living resources of the exclusive economic zones of coastal States by land-locked and geographically disadvantaged States, stressed that, from the point of view of the latter group, the provision was not equitable. More extensive efforts should therefore be made to reach a general agreement on the matter. In that connexion, the Zimbabwean delegation thought that a regional or subregional economic zone would make it possible to remedy the injustice of which the land-locked countries were the victim. The proposal was not new, as could be seen from the Kampala Declaration of March 1974, which the representative of Zambia had been defending ever since he had taken part in the negotiations.

58. The Zimbabwean delegation also wished to associate itself with the sponsors of the proposal to establish a common heritage fund. Such a fund would give more practical weight to the principle of the common heritage which had been accepted by the Conference.

59. A substantial number of delegations were still disinclined to accept several of the provisions of the draft convention as presently worded, and it was therefore obvious that the Conference would have to embark upon more serious negotiations. Constant and premature reference to a consensus, where there was so far not even a semblance of consensus, merely deferred the moment when a more positive attitude could be adopted. The delegation of Zimbabwe trusted that, in the course of the next series of negotiations, the proposals submitted by the many delegations that were not yet satisfied with the provisions of the draft convention would be examined seriously.

60. Mr. OXMAN (United States of America) congratulated the Chairman of the Second Committee on his balanced and cautious report. Everybody was aware of his Government's views regarding the shipping rights of all vessels, including warships, and the other important uses of the seas from the standpoint of the maintenance of peace and security. The United States Government reserved its position with regard to any attempt to modify those rights.

61. Mr. PARK (Republic of Korea) felt that, on the whole, the report of the Chairman of the Second Committee presented an accurate view of the discussions that had been held at the informal meetings. As the representative of the Philippines had stated, however, it would perhaps have been advisable to point out that over 70 delegations had expressed concern about one and the same issue, so that further discussion

on the subject would therefore presumably be necessary. His delegation hoped that that issue would be taken up once again when the tenth session resumed so as to take into account the views of all the delegations, including that of the Republic of Korea, which had expressed some reservations about the present wording of article 21. It should be possible to make reasonable adjustments in a spirit of mutual conciliation without necessarily upsetting the over-all balance of the existing text.

62. Finally, the Conference should avoid leaving the delicate matter of innocent passage unresolved, as was the case with traditional international law. For such an important aspect of the law of the sea to remain vague would seriously jeopardize the maintenance of international peace and stability.

63. Mr. de LACHARRIÈRE (France) emphasized that his Government was opposed to any change in the legal status of the territorial sea as far as the current text of article 21 of the draft convention was concerned. On the other hand, his delegation was prepared to consider with interest and sympathy the proposal of the United Kingdom delegation regarding the removal of installations on the continental shelf.

64. Mr. STAVROPOULOS (Greece) noted that one delegation had raised the question of the breadth of the territorial sea. Article 3 of the draft convention, which stipulated that "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention", reflected existing customary law. The delegation which had raised the question considered that an exception should be made in the case of its country which it felt was unique. It happened that the case of Greece was equally unique. The question was closed, and it should be left to the wisdom of each State to fix the breadth of its territorial sea, as it might consider advisable, within the existing law.

65. Mr. MOMTAZ (Iran) said that the question of the passage of warships in the territorial sea was of the utmost importance to his country. The Islamic Republic of Iran, which had joined the sponsors of document C.2/Informal Meeting/58, which proposed that the passage of warships through the territorial sea should be subject to notification or prior authorization, wished to draw attention to the need to continue negotiations on the subject upon the resumption of the tenth session. It was quite obvious that there was no consensus on the article in the text of the draft convention concerning the passage of warships, as could be judged from the considerable number of delegations which, at the present session, had come out in favour of notification or prior authorization. Without wishing to go into the substance of the matter, he emphasized that the current wording of the text was not in line with the practice and legislation of a substantial number of States represented at the Conference.

66. Mr. HAYES (Ireland), referring to the point raised by the representative of the Soviet Union regarding delimitation, said that the group of delegations which had initiated document NG7/10/Rev.2 did not accept the text proposed by the Chairman of negotiating group 7 in his report to the ninth session on the work of the group as a basis for negotiation (A/CONF.62/L.47).³ The views of those delegations on that text and its status had already been expressed and had not changed since. Consultations were currently taking place on the subject between the two groups concerned. It was too early to know what the outcome of those consultations would be, but his delegation, like that of the Soviet Union, hoped that agreement would be reached on a consensus text so that the problem could be resolved.

67. Mr. PASHKEVICH (Byelorussian Soviet Socialist Republic) said that the report of the Chairman of the Second Committee reflected the discussions objectively.

68. The draft text drawn up at the previous session was a compromise text whose status would inevitably be undermined if substantive modifications were made to it. The present session had been able to see, once again, that it was impossible for the proposals to amend one or other of the articles of the draft convention to obtain unanimous support since, for the most part, they entailed granting one group of States additional advantages at the expense of another group. In fact, no new arguments in favour of a modification of the articles drawn up at the ninth session had been put forward. The Second Committee was simply undergoing a repetition of the difficult phase which the Conference had gone through during the previous session and which it had resolved by means of compromises made on both sides. Going back over old ground by proposing substantive changes on issues on which a compromise had already been reached must be avoided. The Conference must forge ahead and conclude its work as quickly as possible.

69. Mr. KIM CHUNG (Viet Nam) wished to pay tribute to the Chairman of the Second Committee thanks to whom the Committee had been able to put together a package of balanced solutions. His delegation was not completely satisfied with all the proposed solutions, in particular, those in Part IV, but it was nevertheless prepared, in a spirit of compromise, to consider the package prepared by the Second Committee as broadly acceptable, with the exception of paragraph 1 of articles 74 and 83.

70. His delegation had noted with concern that efforts were continuing with a view to reopening negotiations on fundamental questions on which agreement had already been reached. In that connexion, it was to be hoped that the spirit of moderation and conciliation would prevail when the tenth session was resumed so that the efforts of the Power which was seeking to reopen important issues which had already been settled and to sabotage the draft convention would be checkmated.

71. In connexion with the question of the criteria applicable to the delimitation of maritime boundaries between States with opposite or adjacent coasts, his delegation hoped that the current negotiations between the two groups of interested States would culminate in an improved formulation of paragraph 1 of articles 74 and 83. In that connexion, his delegation welcomed the goodwill and spirit of conciliation shown by the group of 29.

72. Mr. ARNOUSS (Syrian Arab Republic) wished to support the comments made by the Philippine delegation and by others regarding the innocent passage of foreign military vessels through the territorial sea of coastal States.

73. Mr. SYMONIDES (Poland) wished to remind members that his delegation was opposed to reopening the discussion on fundamental questions—in particular, articles 21 and 63—which had already been thoroughly examined by the Second Committee. Nevertheless, among the articles considered by the Second Committee there were several on which it could not be said that compromise or agreement had been reached, namely, articles 74 and 83 regarding respectively the delimitation of the exclusive economic zone or the continental shelf between States with opposite or adjacent coasts. His delegation hoped that the negotiations currently under way would lead to a solution.

74. Mr. MUDHO (Kenya) considered that the report of the Chairman of the Second Committee was a fair reflection of the discussions which had taken place. While proposals had been made for the improvement of articles 21 and 63, the Second Committee by and large had not modified the text.

75. The problem of the delimitation of maritime boundaries between States with opposite or adjacent coasts still awaited solution. His delegation hoped that the current negotiations between the two interested groups would be speedily concluded; it did not consider, however, that positions had

³ *Ibid.*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

changed to the point where the formula of the Chairman of negotiating group 7 would be acceptable. Delegations should beware of any initiative which sought to reopen negotiations on those parts of the text on which consensus had already been reached. It was more important to concentrate on the remaining questions.

76. Mr. QUATEEN (Libyan Arab Jamahiriya) noted that a number of important questions had not been mentioned in the report of the Chairman of the Second Committee, in particular, the question of the innocent passage of foreign military vessels through the territorial sea of coastal States. He supported the position of the delegation of the Philippines regarding the delimitation of maritime boundaries between States with opposite or adjacent coasts. His delegation reminded members that it had refused to accept the formula proposed by the Chairman of negotiating group 7 which it considered to be contrary to the basic principle of the convention. The formula had proved to be a source of discord and had made it impossible to reach a consensus. Nevertheless, negotiations were continuing and his delegation hoped that they would lead to an acceptable agreement between the two groups concerned.

77. Mr. VELLA (Malta), speaking as co-author of the proposal regarding the innocent passage of foreign military vessels through the territorial sea of coastal States (C.2/Informal Meeting/58), supported the representative of the Philippines. He urged that negotiations on the question must be resumed during the next session.

78. Mr. CALDEIRA MARQUES (Cape Verde) said that a great many delegations had requested the creation of a consultative group on the question of the innocent passage of foreign military vessels through the territorial sea. The problem must clearly be solved sooner or later and he hoped that a consultative group would be set up when the Conference resumed its work.

79. Mr. ALAKWAA (Yemen) considered that, in order to guarantee the security of coastal States as well as international security, the draft convention must include, among the provisions concerning the innocent passage of foreign military vessels through the territorial sea, a stipulation requiring the prior agreement of the coastal State. He supported the proposal of the Philippine delegation.

80. Mr. OUDOVENKO (Ukrainian Soviet Socialist Republic) said that he was resolutely opposed to any attempt to revise the text of the draft convention on fundamental issues, in particular, articles 21 and 63. Such an initiative would represent a backward step and would threaten the entire compromise text. He reminded members that the Soviet delegation had stated that it would not insist that its proposed amendments, in particular, those to article 55, be considered, if other delegations adopted a similar stance. Owing to circumstances which were known to all, the Conference was passing through a difficult stage and important problems remained to be settled. He appealed to the Conference to concentrate its efforts on seeking solutions to those problems as soon as it resumed its work.

81. Mr. LACLETA MUÑOZ (Spain) said that the Chairman of the Second Committee had clearly shown how the remaining difficulties could be solved. Several representatives had raised the question of delimitation which was currently being examined by two groups of countries. The so-called group of 22 had in fact accepted the compromise formula of the Chairman of negotiating group 7, as a basis for negotiations and the difficulties which had arisen subsequently were due to the fact that the other group, the group of 29, had rejected it. There had, however, been progress as the two groups had begun to consider the two key words in the formula of the Chairman of negotiating group 7. In that connexion, his delegation had already stated its position clearly on the transitory measures and the settlement of differences. He hoped that the efforts

under way would succeed and that patience and good faith would make it possible to reach an agreement.

82. Mr. SHASH (Egypt) recalled the position adopted by his delegation with regard to article 21, paragraph 3, on the innocent passage of warships. That position had previously been developed by the delegation of the Philippines. He was of the view that a consensus had not been achieved on that paragraph and stated that quite a number of delegations would want to continue negotiations when the work of the Conference resumed.

83. Mr. ABDOULAYE (Niger) felt that even though several articles were worth improving that did not mean that the discussions and compromise solutions worked out should be started all over again. He re-emphasized the importance he attached to the proposal to amend article 56 (C.2/Informal Meeting/45/Rev.1 and Corr.1) where it was suggested that a common heritage fund should be established. The major philosophy underlying the work of the Conference was contained in the idea of a common heritage of mankind. The notion had been endorsed by the international community without opposition in General Assembly resolution 2749 (XXV). He understood the difficulties that the proposal raised for certain delegations but he invited them to be more flexible and understanding. The establishment of that fund was in no way aimed at diminishing the rights and privileges of coastal States but at expressing in practical terms the idea of a common heritage of mankind. It was a matter of reducing the widening gap between developed and developing countries and counterbalancing the situation of countries disadvantaged by geographical location or even by history. The international community was currently engaged in seeking a new international economic order based on justice and equity. The convention on the law of the sea was one aspect of that new international economic order.

84. Mr. KITTIKHOUN (Lao People's Democratic Republic) urged delegations not to seek to reopen discussions on article 21 and others, particularly those relating to the exclusive economic zone, which had already been sharply debated in previous sessions of the Conference. In that way, progress could be made and the draft convention adopted.

85. Mr. PRANDLER (Hungary) shared the view of the Chairman of the Second Committee who had stated that consensus should not be taken as applying to each individual provision entrusted to the Second Committee for consideration but instead to those provisions as a whole, while recognizing that views were divergent on some of those provisions. Consensus might even be considered to have been achieved the year before when States had demonstrated the political will to accept the provisions. From that viewpoint, the important articles, particularly those concerning delimitation of the territorial sea, innocent passage and the exclusive economic zone, should be accepted as a basis for consensus. Even though it was not happy with the provisions on the economic zone, for example, his delegation would refrain from seeking to amend them if other delegations were ready to do likewise. He felt that the provisions on the territorial sea and the innocent passage of warships in the territorial sea were balanced from a legal point of view and protected the interests of both coastal and third States. Reopening discussions on them would play into the hands of those who wished to delay the adoption of the Convention.

86. Mr. OGNIMBA (Congo) said he was still worried by the question of innocent passage of foreign warships in the territorial sea of States. He felt that the matter had not been sufficiently discussed and favoured continuing negotiations on that subject.

87. Mr. VARVESI (Italy) stated that his delegation could not accept any amendment of the provisions governing innocent passage in the territorial sea. Furthermore, he supported the proposal of the United Kingdom concerning article 60, para-

graph 3, on artificial installations in the exclusive economic zone.

88. Mr. McKEOWN (Australia) said he fully agreed with Mr. Aguilar's view that the task of the Second Committee was to improve and complete the draft convention and not to go into matters that had already been settled. He also supported the conclusions of the report, in particular, the comments on the support and particular attention given to a proposal and on the lack of consensus on controversial proposals.

Report of the Chairman of the Third Committee

89. Mr. YANKOV (Bulgaria) speaking as Chairman of the Third Committee presented that Committee's report. He recalled that, at the end of the ninth session, the Third Committee had completed substantive negotiations on Parts XII, XIII and XIV. The outcome of those negotiations had been incorporated into the informal text of the draft convention on the law of the sea. The agreement reached in the Third Committee had given reason to hope that a broader consensus would be achieved within the Conference itself and that had turned out to be true.

90. At the tenth session of the Conference, the Third Committee had held an informal meeting on 25 March with a view to making sure that all questions had actually been settled. The Committee had reiterated its conclusions and agreed that the draft of Parts XII, XIII and XIV was a compromise and that the balance achieved should not be destroyed by reopening debate on matters that had been settled after protracted negotiation. The Drafting Committee's recommendations did not change the substance of the text; its wording had, on the contrary, been substantially improved. Since the Drafting Committee's recommendations had been considered at informal plenary meetings of the Conference, it would be useful to issue the suggestions adopted in an official document.

91. Mr. MHLANGA (Zambia) felt that the Third Committee should take due account of the outcome of the Second Committee's negotiations with regard to the exclusive economic zone and the continental shelf and of the response that the Second Committee would be making to the concerns of land-locked and geographically disadvantaged countries in that connexion.

The meeting rose at 6.25 p.m.

149th meeting

Thursday, 16 April 1981, at 11.15 a.m.

President: Mr. T. T. B. KOH (Singapore)

Organization of the future work of the Conference

1. The PRESIDENT said that, at its 63rd meeting, the General Committee had adopted the following recommendations to the plenary Conference regarding the future programme of work of the Conference: firstly, the tenth session would be suspended on 24 April 1981 and resumed on 3 August 1981 for four weeks ending on 28 August 1981 and, if the Conference so decided, would be extended by one week to 4 September 1981; secondly, the Drafting Committee would hold an intersessional meeting of five weeks beginning on 29 June in order to complete its mandate; thirdly, in order to facilitate the attendance of experts from developing countries on First Committee matters, the Drafting Committee would take up Parts XV, XVI and XVII of the draft convention during the first three weeks and Part XI during the last two weeks. If the Drafting Committee was unable to complete its mandate, the Conference would have to make arrangements for it to work during the resumed tenth session.

2. He had held discussions on the procedure for deciding to extend the session, if necessary, and it had been agreed that such a decision would be taken in accordance with the rules of procedure. He was sure all delegations hoped that that decision could be made in accordance with the traditional practices of the Conference, that is, on the basis of consultations and consensus without resorting to voting. The programme of work of the resumed tenth session would be to complete the programme agreed on at the end of the ninth session. An attempt would also be made to find compromises on the four issues that had been outstanding at the end of the ninth session and on any other parts of the draft convention if such efforts could facilitate the early completion of the work of the Conference.

3. Last, the venue recommended by the General Committee for both the intersessional meeting of the Drafting Committee and the resumed tenth session of the Conference was Geneva.

4. Mr. ABAD SANTOS (Philippines) said that the programme of work as set forth by the President was still not clear. An important aspect of that work was to formalize the

text of the draft convention. However, the United States Government had decided to conduct a policy review and had stated that that review would not be completed before the fall of 1981. His delegation wished to know whether the programme at the resumed tenth session would include formalization of the text. Secondly, if that was the case, he wished to know whether the Conference was prepared to formalize the text without the participation of the United States. If the text could not be formalized, it would be pointless to hold a resumed tenth session. Thirdly, he wished to know whether the resumed tenth session would be the last one.

5. The PRESIDENT said that delegations themselves would have to decide whether the resumed tenth session would be the last one. The programme of work which he had previously set forth and which had been agreed on at the end of the ninth session embodied formalization of the text. The question whether delegations were prepared to proceed without the participation of the United States had been put to the Chairman of the Group of 77, who had stated that the work of the Conference could not be delayed because of one delegation. He (the President) believed that under benign pressure from the Conference the United States might be able to expedite its review, and he was sure everyone hoped that its delegation would come to the resumed tenth session prepared to set forth its definitive views.

6. Mr. TSHIKALA KAKWAKA (Zaire) asked the President to explain his remark that the resumed tenth session would seek to arrive at a compromise on questions other than the four outstanding issues. At the ninth session, his delegation and others had made inquiries about policies for production limitation and had been told that the matter had been referred to the First Committee. That Committee had dealt with the subject rather informally, and his delegation now wished to request that it should be regarded as an important issue which required solution and should be explicitly included in the programme of work of the resumed tenth session.

7. The PRESIDENT said that the question of production limitation could be raised at the 150th meeting of the Conference, which would be held that afternoon to hear the