

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/SR.98

98th Plenary meeting

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

50. The Portuguese proposal regarding periodic conferences on international ocean affairs (A/CONF.62/L.23) required careful attention by the Conference, in conjunction with articles 152 and 153, and might well be included in the final clauses.

51. Mr. OXMAN (United States of America) said that his delegation had listened with great attention to the suggestions made regarding final clauses. While noting that certain matters such as reservations remained to be considered, it had found various points made with respect to the matters under discussion quite illuminating. He felt therefore that many delegations, like his own, would wish to study them more carefully and consult more closely with those concerned.

52. In that connexion, his delegation believed it would be a mistake to confuse support for national liberation movements and the desire to hear their views, on the one hand, with the question of their international legal capacity to become parties to a convention on the law of the sea, on the other hand. There was no precedent for the latter step and such proposals, if pressed, might well complicate efforts to resolve other issues and secure a widely ratified convention.

53. In his delegation's view, the existing text of the preamble and final clauses was the proper foundation for further consideration of those matters and no basis existed for amending the draft text at the current session.

54. Mr. KOVALEV (Union of Soviet Socialist Republics), referring to the possible participation of national liberation movements in the convention, said that, in keeping with its well-known position, the delegation of the USSR would support the right of the Palestine Liberation Organization to participate in and sign the convention. His country would continue to uphold the inalienable right of the Palestine people to establish its own State.

55. Mr. ATEIGA (Libyan Arab Jamahiriya) said that his delegation endorsed the four-Power proposal in A/CONF.62/L.29 and the supplementary 20-Power proposal in A/CONF.62/L.26. Both those proposals were based on political and legal considerations, and other conferences had adopted similar provisions.

56. People under colonial domination had a rightful share in the common heritage of mankind, and there could be no doubt that the national liberation movements had fulfilled their obligations under other international instruments.

57. His delegation thought that the preamble should be based on universal concepts such as: the need to update the peaceful use of the seas and oceans, and to protect them; the relationship between the convention and the new international economic order; the common heritage of mankind,

including both developing and developed countries; and the development of the international law of the sea.

58. Mr. MARSIT (Tunisia) said that it had been stated by some delegations that the preamble and final clauses as they appeared in the negotiating text were acceptable. For the moment, he would only say that his delegation considered that they needed amending, particularly the preamble.

59. The Conference had decided at Caracas to authorize the national liberation movements to participate as observers in the Conference. It was only logical, therefore, that they should be permitted to become contracting parties.

60. As for the question of the admission of the European Economic Community as a contracting party, his delegation would examine the matter in all objectivity.

61. Mr. TARCIC (Yemen) said that his delegation endorsed the 20-Power proposal concerning the accession of the national liberation movements to the convention.

62. With respect to the question of reservations, there could be no doubt that the future convention would be the most important treaty of the twentieth century and it was therefore essential that limited reservations should be permitted in order to ensure the maximum number of contracting parties. If limited reservations were not permitted, countries whose vital interests were not respected in the convention would be unable to become contracting parties. As an example he mentioned the question of the passage of warships through straits, in respect of which the provisions of the convention might conflict with those of other international instruments.

63. Mr. ARIAS SCHREIBER (Peru) said that the preamble and final clauses as they appeared in the negotiating text were unsatisfactory, since they were much too weak. According to proposals which had been submitted by various delegations, including his own, the preamble would express the realities of the situation in which the Conference had been convened and the principles on which it was based; it would also explain the developments that had occurred since the First and Second United Nations Conferences on the Law of the Sea.

64. The principles on which the Conference was based were of interest to all States, and historical facts were historical facts; he was therefore unable to understand why any delegation should object to them being mentioned. What were the arguments against doing so?

65. Mr. EL-IBRASHI (Egypt) said his delegation reserved the right to reply to the statement made by the representative of Israel opposing the 20-Power proposal.

The meeting rose at 1.25 p.m.

98th meeting

Monday, 15 May 1978, at 11.05 a.m.

President: Mr. H. S. AMERASINGHE.

Adoption of a convention dealing with all matters relating to the law of the sea, pursuant to paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973, and of the Final Act of the Conference (continued)

Preamble and final clauses (concluded)

1. Mr. MONNIER (Switzerland) said his delegation believed that the preamble should be as short as possible. It

should set forth the general outline of the future convention and indicate the main purposes of the provisions contained therein. There was no need for it to be proportionally as long as the future convention, as suggested by the Peruvian representative at an earlier meeting.

2. His delegation was unable to support the proposal to delete the reference in the last preambular paragraph of the

informal composite negotiating text¹ to the rules of customary international law. As the secretariat indicated in document A/CONF.62/L.13,² such a reference appeared in a number of codification conventions adopted at conferences held under United Nations auspices. The reference to customary international law was not a ritual formula. It had a practical significance and, in fact, furnished the means for ruling on matters that were not expressly covered by a convention, or for which the convention might not provide an unambiguous solution. Such a reference would play a similar role in the convention which the Conference was in the process of drafting. It was inevitable that the convention would not touch on certain questions and would provide only partial solutions in respect of certain matters.

3. It was clear that the future convention would have to establish the new international law of the sea; in other words, the element of the progressive development of international law would perhaps be much more pronounced than the element of the codification of international law, which merely constituted a confirmation of existing law. However, the convention would also reproduce existing rules. In that connexion, he drew attention to the provisions relating to the territorial sea and the contiguous zone (part II), the continental shelf (part VI) and the high seas (part VII). Furthermore, the reference to customary international law would also be useful with a view to ensuring the peaceful settlement of disputes.

4. He stressed that the objective of the reference to customary international law should not be to neutralize the new international law of the sea but to establish a link between it and existing law—in other words, to ensure the most effective application of the provisions of the future convention by establishing a set of rules without any lacunae. Accordingly, his delegation considered that a reference in the preamble to the rules of customary international law was indispensable.

5. Mr. AL-KINDI (Oman) said that the question of the preamble should not pose any problem, since he was sure that general agreement as to its form and content could be worked out satisfactorily. His delegation believed that the preamble should be comprehensive, should indicate in general the principles and purposes of the convention and should stress the importance of the concept of the common heritage of mankind and the contribution of the convention to the development of the new international economic order and to the maintenance of international peace and security. It should also contain references to the relevant resolutions of the United Nations. However, no attempt should be made to introduce into the preamble controversial matters that would make it impossible to produce an agreed text in the shortest possible time.

6. On the other hand, his delegation considered that the final clauses should be examined with great care and that such examination should take place at a later stage. The final clauses should facilitate acceptance of the convention by the largest possible number of parties. During the present session of the Conference, reference had often been made to the “delicate balance” which had allegedly been achieved in the informal composite negotiating text. However, it seemed that the so-called “delicate balance” was merely intended to safeguard the interests of the predominant industrial States to the detriment of the developing countries. In that connexion, he recalled the attempt made to exclude any discussion of certain matters, such as the question of straits. Hence, if the final clauses made it impossible for States to enter reservations in respect of certain provisions of the convention, the universality of the convention would never be

achieved. While he recognized the disadvantages that might arise if reservations were permitted, he stressed that the alternative would be to create a convention that were merely a dead letter. His delegation therefore considered it essential that the convention should include a general clause permitting parties to enter reservations. It was prepared to take part in consultations on the subject at a later stage, particularly after completion of work on the substantive part of the convention.

7. His delegation reaffirmed its full support for the proposal that the convention should be open for accession by recognized national liberation movements. What was involved was the sharing of the common heritage of mankind. That heritage was to be enjoyed by mankind as a whole and not only by those who happened to have a “territory”, to the exclusion of those who had the misfortune of being expelled from the land that was lawfully theirs or of being dominated by foreign Powers.

8. His delegation also supported the proposal by Fiji, New Zealand, Papua New Guinea and Suriname (A/CONF.62/L.29), which contained ideas that were consistent with his Government's policy.

9. Lastly, he said that in order to ensure the universal nature and applicability of the proposed convention, it was essential to specify that the convention would have to be ratified by a large number of States before it came into force, so that all interests were fairly represented and no single group of States had more than its fair share of influence. His delegation would therefore be unable to support the inclusion of a clause for provisional application, since that would be contrary to its general approach to treaties such as the one now under consideration.

10. Mr. GOERNER (German Democratic Republic) said that, pending the resolution of the hard-core issues, his delegation could make only preliminary remarks on the question of the preamble and final clauses of the convention. With regard to the matter of reservations and the number of ratifications required for the entry into force of the convention, his delegation would be able to adopt a final position only after examining the substantive provisions of the draft convention.

11. As regards the preamble, his delegation could associate itself with the general ideas reflected in the informal composite negotiating text. It considered it necessary that the preamble should state that the codification and progressive development of the law of the sea should contribute to the maintenance of international peace and security, in accordance with the purposes and principles of the United Nations, and should also affirm that the rules of customary international law continued to govern matters not expressly regulated by the provisions of the convention.

12. With regard to the final clauses, his delegation was prepared to accept the formulations contained in the informal composite negotiating text. In its opinion, it was not advisable to introduce into the final clauses provisions which were out of place or which, because of their controversial nature, might give rise to lengthy and fruitless discussion.

13. One of the most important final clauses would be that concerning participation in the convention. Since the future convention would affect the vital interests of all States without exception, it must be open for accession by all of them; and his delegation therefore fully agreed with the existing wording of article 299. In accordance with his Government's basic policy of providing active support to peoples struggling against colonialism, neo-colonialism and foreign domination, his delegation fully supported the proposal that the Palestine Liberation Organization should be permitted to become a party to the convention.

14. Referring to the proposal by Fiji, New Zealand, Papua New Guinea and Suriname concerning the granting of con-

¹*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

²*Ibid.*, vol. VI (United Nations publication, Sales No. E.77.V.2).

tracting party status to territories that had not yet achieved full independence, he said that any decision in the matter should be based on fundamental United Nations resolutions, in particular the Declaration on the Granting of Independence to Colonial Countries and Peoples.³

15. With regard to the proposal by Denmark (95th meeting), his delegation doubted seriously that customs unions, communities and other economic groupings should be allowed to accede to the convention. In his delegation's opinion, it would be necessary first to establish to what extent such bodies could assume the rights and obligations arising from the convention; and the question therefore required further study.

16. As regards the proposal to insert a clause for the provisional application of the convention, his delegation had an open mind.

17. Mr. TÜNCEL (Turkey) stressed the importance of the preamble, and said that his delegation would continue to support all efforts aimed at expanding its scope. The preamble should define the objectives and purposes of the convention and should form an integral part of the instrument. It had been observed that the different geographical characteristics of seas and oceans would raise questions of application and interpretation. Consequently, his delegation believed that the preamble should contain a provision that would stress the need to apply and interpret the provisions of the convention in a manner which would not prejudice the rights of other States and which would take into account the geographical characteristics of regions and subregions. In that connexion, his delegation endorsed the proposal by the Mexican delegation (A/CONF.62/L.25) and hoped that it would be adopted by the Conference.

18. As regards the final clauses, he was aware of the general desire to adopt the convention by consensus. However, the classification given in the President's memorandum (A/CONF.62/L.28) of the degrees of progress on the hard-core issues indicated the true state of affairs in the Conference with regard to the possibility of adopting the convention by consensus. Since it was desirable that the convention should be adopted by the largest possible number of States, and since the consensus procedure was difficult to apply, his delegation believed that the final clauses should include the general principle recognized in international law to the effect that States would be free to enter reservations regarding the provisions of the convention.

19. Mr. SAULESCU (Romania) said that, in his delegation's opinion, the present text of the preamble was extremely exiguous by comparison with the scope of the convention and the important political concepts embodied therein. The preamble should not be too long; but the body of the convention, on the one hand, and its preamble and final clauses, on the other, should not be disproportionate. The preamble should set forth the major objectives of the convention, such as the promotion of the peaceful uses of the seas and oceans and the establishment of the new international economic order, and should refer to the concept of the common heritage of mankind and the special interests of the developing countries, in addition to the more general concept of international peace and security and the rapprochement of all peoples.

20. Relations in the area of the law of the sea should be based, like all international relations, on the universally accepted general principles of international law, such as the principles of national sovereignty and independence, non-use of force, non-interference in the affairs of other States, the equality of all countries and peoples, and mutual advantage. In his opinion, therefore, the present text of the pre-

amble should be expanded in order to incorporate those concepts and the concepts mentioned by other delegations.

21. It was true that the drafting of the final clauses could not be completed until the Conference knew what the final content of the future convention would be. However, certain traditional provisions peculiar to all final clauses, such as conditions for entry into force, signature and ratification, could be drafted forthwith.

22. In his delegation's opinion, national liberation movements, and in particular those movements which had been recognized by the United Nations and had been invited to participate in the Conference as observers, should be permitted to accede to the future convention. The resources of the seas and oceans should be used in the interest of all peoples; elementary justice demanded that they should be used first of all for the benefit of the most disadvantaged peoples in the world, namely, those peoples which were not yet free and independent. For that reason, his delegation supported the proposals contained in documents A/CONF.62/L.26 and 29.

23. Mr. AN Chih-yuan (China) said that the Third United Nations Conference on the Law of the Sea had been convened in the wake of significant changes in the international situation; numerous newly-independent developing countries had launched a vigorous struggle against the maritime hegemonism of imperialism and the super Powers, and had called for a change in the old law of the sea. The new convention should reflect that important development in the international situation. It should contribute to the struggle of the Third World and indeed of all countries against maritime hegemonism. It should promote State sovereignty and independence, safeguard national resources, enhance the development of national economies and contribute to the establishment of a new international economic order.

24. The preamble, which was an important part of the convention, should explicitly set forth the aims of States parties in drawing up the convention and should indicate the principles to which they adhered—namely, the safeguarding of national independence, the equality of all States large or small, mutual respect for sovereignty and territorial integrity, and respect for the legitimate rights and interests of States. It should declare the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction to be the common heritage of mankind and should stipulate that the resources of that area should be used in the interests of mankind as a whole, with special attention to the interests and needs of the developing countries.

25. On the question of signature of, and accession to, the future convention, his delegation endorsed the proposal contained in document A/CONF.62/L.26 that liberation movements recognized by the United Nations and invited to take part as observers in the work of the Third Conference should be permitted to accede to the convention. It also supported the proposal contained in document A/CONF.62/L.29 that those territories which had been invited to participate as observers in the Conference in accordance with General Assembly resolutions should be permitted to accede to the convention.

26. The question of reservations was an important matter which related to the sovereignty of States parties and should therefore be treated with great care. That question could best be considered further after practical results had been achieved in the negotiations on the substantive part of the convention.

27. Mr. DE LACHARRIÈRE (France) said that at the current session the Conference could claim only to have identified a number of extremely complex and important problems; it could not claim to have studied those problems or, still less, to have attempted to find solutions for them. Nevertheless, if the Conference was one day to be in a posi-

³General Assembly resolution 1514 (XV).

tion to adopt a convention, it was essential that, with regard to the preamble and final clauses, it should make the same effort of analysis, and the same efforts to find solutions, as it had made in connexion with the substantive issues. Since it was quite obvious that no such efforts would be made at the current session, he merely wished to state the position of his delegation on some of the questions raised.

28. His delegation supported the statement made at the 95th meeting by the representative of Denmark on behalf of the countries of the European Economic Community. It confirmed its opposition to the present wording of the transitional provision, and reminded the participants of its opposition, expressed at the fourth session of the Conference, to the idea that competences exercised over areas of the seas and oceans should be made dependent on certain political characteristics of the territories concerned. His delegation would revert to those questions when the Conference came to study the preamble and final clauses at a future session.

29. Mr. PHAM GIAN (Viet Nam) said that, at the present stage in the work of the Conference, which was still characterized by difficult negotiations on many questions of substance, it would be more advantageous to concentrate efforts on the successful conclusion of those negotiations and attempt to find appropriate solutions to the questions at issue.

30. On the question of the signature of the future convention, his delegation considered that the convention should be open for signature to all States and all peoples represented by national liberation movements, in order that it should be truly universal in scope. In keeping with a fundamental principle governing the foreign policy of Viet Nam, namely that continuous and effective support should be given to national liberation movements, and believing that peoples fighting to establish their independent political and legal personality had the right to accede to international agreements, his delegation proposed that the Conference should include in the final clauses a provision stating that national liberation movements which had been recognized by the United Nations and invited to participate in the Conference as observers should be allowed to accede to the future convention on an equal footing with other signatories.

31. His Government firmly supported the Palestine Liberation Organization which, in its view, was fully entitled, like any other State, to participate in the future convention. For that reason, his delegation supported the proposal contained in document A/CONF.62/L.26.

32. Mr. GOUK (Democratic People's Republic of Korea), referring to the proposal contained in document A/CONF.62/L.26, said that it was the policy of his Government to express support for, and solidarity with, liberation movements struggling against imperialism and colonialism for national independence and freedom. For that reason, at the Caracas session of the Conference, his delegation had actively supported the Arab countries' proposal that liberation movements recognized by the United Nations should be invited to attend that session as observers. Since the Conference had decided to allow national liberation movements recognized by the United Nations to participate in the Conference, and since those movements had a vital interest in the future convention on the law of the sea, they should be permitted to participate in the convention. The fact of opening the convention for signature to national liberation movements would prove the progressiveness and equity of the future convention. His delegation therefore fully supported the proposals contained in document A/CONF.62/L.26.

33. Mr. ALLOTT (United Kingdom) said that his delegation agreed with the USSR delegation that the preamble should be short and non-controversial; the draft preamble in the informal composite negotiating text was commendably brief. The questions of reservations and entry into force should, in his delegation's view, be discussed at a later stage.

In view of the special legal competences granted to the European Economic Community by its member States, his delegation favoured the insertion of clauses concerning economic groupings, which had been explained by the representative of Denmark.

34. His delegation was considering the proposal contained in document A/CONF.62/L.29 and would see no difficulty if the Cook Islands and Niue were permitted to sign the convention, but it would require more time in order to consider the implications for the United Kingdom's associated States. The situation of national liberation movements was quite different, and his delegation saw no justification for their inclusion as parties to the future convention. Some reference had been made to the transitional provision, which was not really a final clause and which his delegation opposed. A number of other proposals had been submitted; but, in his delegation's opinion, it was not appropriate to incorporate them by way of revision of the informal composite negotiating text. Articles 298 to 303 of that text were in general very satisfactory.

35. Mr. ZEGERS (Chile) said that the preamble and final clauses should take account of the very special character of the Conference and convention, and must be drafted in the light of the political negotiations which had taken place during the past 10 years. In drafting them, a number of points should be borne in mind. Firstly, the future convention would be the first ever to be negotiated by consensus. Secondly, the convention would be an all-purpose vehicle intended to cover all aspects of the law of the sea. Thirdly, the Conference was endeavouring to devise unitary standards for all seas and oceans. Lastly, the Conference had had the largest-ever participation in history.

36. For the purposes of the interpretation of the convention, it would not be sufficient to refer to the very sound general provisions of international law embodied in the Vienna Convention on the Law of Treaties,⁴ and consideration would have to be given to the incorporation of final clauses which were broader and more fully developed than those contained in the present text. However, the final clauses must contribute to the success of the Conference; they should not constitute a further difficulty in negotiation and should ensure effective implementation of the convention. They should provide for maximum participation and maximum universality. In addition, they should ensure that the convention entered into force as early as possible. Since the convention would have been negotiated and approved by consensus, the number of ratifications required for its entry into force should be smaller than that normally required for international treaties.

37. His delegation considered that part XI of the convention should be implemented on a provisional basis. In due course, a review conference should be held to discuss that part of the convention. As to the actual revision of the convention as a whole and amendments thereto, consideration would have to be given to procedures which would make such revision difficult but not impossible. In that connexion, his delegation supported Portugal's proposal that there should be periodic meetings of the parties to the convention to discuss its operation (A/CONF.62/L.23). In the opinion of his delegation, such meetings should be held, not every three years as Portugal had suggested, but every five years.

38. The existence of indiscriminate reservations or a clause which would permit reservations incompatible with the general tenor of the convention would, in his delegation's opinion, be very undesirable. Reservations in general should be expressly prohibited, or they should be authorized for a few

⁴*Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27.

specific cases which were not incompatible with the “package deal” which made up the convention.

39. On the question of participation in the convention, his delegation favoured the participation of all States. With regard to supra-national organizations, such as the European Economic Community, it seemed clear that that organization should be authorized to accede to the convention within the area of its competence, i.e. fisheries, on the express understanding that it would not be able to become a member of the International Sea-Bed Authority and would not have the right to vote at a review conference. His delegation viewed with sympathy the proposal contained in document A/CONF.62/L.29.

40. Another question which would have to be taken up was the relationship of the future convention with existing conventions or treaties. Although there were clear provisions in the Vienna Convention on the Law of Treaties that might solve most problems in a residual manner, it might be worthwhile to make specific references to particular conventions in connexion with which problems could arise. He had in mind in particular the Convention on the Continental Shelf.⁵ In other respects, a general reference to international law might be sufficient.

41. With regard to the very important question of the residual application of customary rules, his delegation agreed with the Israeli delegation that the present text embodied only provisions of a very general nature. Consequently, the development of those provisions was a matter for specific treaties or international custom, which was the main source of international law and in particular the law of the sea. In his opinion, the rule of the residual nature of customary law should be expressly spelt out; if reference was made thereto in the preamble, there should also be some reference to the current practice of States and to trends in such practice.

42. With regard to the principles which should be enunciated in the convention, his delegation supported the Mexican delegation's proposal (A/CONF.62/L.25) that reference should be made to two principles of the highest importance: good faith and non-abuse of rights. The preamble should contain some reference to the necessary unity of the law of the sea and to the interrelationship between all problems relating thereto. It should also set forth some of the principles that had been proposed by the Group of 77, including the concept of the common heritage of mankind, the special interests of the developing countries and the establishment of the new international economic order. It should contain, in addition to the reference to the progressive development of international law, some mention of the new political, economic and social realities prevailing in the world. It should also refer to the very special character of the negotiations concerning the convention—negotiation by consensus and the universal participation in that work.

43. Portugal's proposal concerning the co-ordination of international organizations which undertook activities relating to the sea was, in his delegation's view, extremely important. Very careful consideration should also be given to Peru's proposal concerning the establishment of an international commission on the law of the sea (A/CONF.62/L.22). The Conference must devise procedures which would facilitate the approval, entry into force and actual implementation of the convention, while at the same time ensuring that the provisions of the preamble did not delay the approval of the convention. In that respect, he was confident that the presidential team would find means of proposing a revised over all text—including specific clauses on all the important points mentioned—which would elicit the greatest possible degree of consensus.

44. Mr. MORALES-SUÁREZ (Colombia) said that his delegation supported the views expressed by the delegation of Switzerland concerning the length of the preamble and also concerning the more important question of customary international law. On the latter question, his delegation considered that, whether or not a reference to customary international law was included in the preamble, such reference must at all costs be included in the body of the convention. In his opinion, it would be premature to comment on the important problem of reservations, which must be dealt with in the final clauses.

45. Mr. KACHURENKO (Ukrainian Soviet Socialist Republic), referring to the preamble, said that his delegation could agree with the formulation in the informal composite negotiating text, since it considered that the preamble should be brief and non-controversial. In its opinion, it would be premature at the present stage to introduce any amendments in the text of the preamble because the issues involved had as yet been discussed only in a preliminary and general manner at a few plenary meetings of the Conference, and had not been considered in detail informally at a level corresponding to the level of the committees and to the level at which the substantive articles of the negotiating text had been discussed.

46. With regard to the final clauses, he noted that, in the course of the discussion, reference had been made to a number of complex problems that prevented the adoption of decisions on the final clauses of the convention at the current stage. One of those problems was the question of reservations. On that question, it was clear that no delegation could define its position until the definitive text of the convention had been elaborated. It was true that intensive work was now being conducted in the negotiating groups on a number of important issues. However, much remained to be done to arrive at appropriate decisions on those issues, and no one could foresee what the final decisions would be. The issues under discussion, and a number of others too, affected the vital interests of States; and it was not possible in such conditions to request participants in the Conference to renounce at the present stage, prior to the conclusion of the negotiations, their right to enter reservations with regard to all or some provisions of the convention, or to ask them to agree to a limited right to enter reservations. In conclusion, he stressed that it would be impossible to take any final decisions or to make any firm recommendations on the question of reservations until the elaboration of the text of the convention had been completed.

47. Mr. AKRAM (Afghanistan) said that his delegation was in favour of a short, clear and precise preamble because such a text would obviate misunderstandings when the new measures which the Conference was preparing came to be implemented. The preamble should, however, clearly emphasize the principle of the common heritage of mankind and the idea that the biological and non-biological resources of the sea should be exploited in such a manner as not to give rise to disputes in the future. Reference should also be made to the fact that the provisions of the new convention were in keeping with the principles of the new international economic order. The developing countries attached great importance to the concept of a new universal economic order which would be beneficial for the future of mankind.

48. A decision on the final clauses should be postponed until a later stage.

49. With respect to the question of the accession of liberation movements to the future convention, his delegation still believed that liberation movements recognized by the United Nations should not be deprived of rights that were being accorded to mankind as a whole.

50. Mr. BENDIFALLAH (Algeria) said that the existing provisions of the preamble by no means reflected the impor-

⁵United Nations, *Treaty Series*, vol. 499, No. 7302, p. 313.

tance and value of the provisions contained in the body of the convention. The many original concepts that were to be embodied in the new law of the sea and their introduction into international relations, called for a more comprehensive preamble that would be stamped with the seal of universalism.

51. His delegation thought it was particularly important that the preamble should mention all the principles that should guide States in the application of the new law. Nothing would be more unjust than to reach agreement on a text and then to circumvent it at the implementation stage. The preamble was the ideal place for setting forth the fundamental objectives of the Conference and for stating the principles that had governed its work. All relevant United Nations resolutions should be expressly mentioned in the preamble, including resolutions 2749 (XXV), 2750 (XXV) and 3067 (XXVIII) on the peaceful uses of the sea-bed and ocean floor, and also resolutions 3281 (XXIX) containing the Charter of Economic Rights and Duties of States and 3201 (S-VI) containing the Declaration on the Establishment of a New International Economic Order.

52. The principle of the common heritage of mankind deserved to be given prominence in the preamble, as did the question of the democratization of the institutional machinery responsible for the management of the common heritage; and emphasis should also be placed on the special needs of developing countries and the land-locked and geographically disadvantaged countries.

57. The future convention must be universal in character. It concerned all peoples, without exception. It must benefit recognized liberation movements and the peoples of dependent and occupied territories and of territories under colonial or other domination. It would achieve its full potential only if all peoples were to benefit from it in an equitable manner, and if account was taken of the needs of future generations.

53. The final clauses could be based on those of existing treaties, but the particular and very special character of the future convention must be also borne in mind.

54. In principle, the new convention was to be the result of a consensus; but, without knowing the exact content of the convention, it was difficult to link reservations with that principle. In any case, his delegation believed that reservations should be excluded on any questions relating to the fundamental objective of the convention or to the major principles of equity, justice and progress.

55. The question of the relationship of the convention to other conventions should be carefully examined in the light of all the relevant factors and principles; and account should be taken of the progressive development of international law and of contemporary political and economic realities.

56. The participation of international organizations in the convention was a point which deserved consideration. Everything should be done to enlarge the scope of the future convention; but the question was closely related to the structure and role of the organization concerned.

58. Mr. ZALDIVAR BRIZUELA (El Salvador) said that his delegation was in favour of including in the final clauses a safeguard clause to the effect that national legislation enacted, prior to the adoption of the convention, with respect to zones extending beyond 12 nautical miles might continue to be applied to the extent that it did not affect the rights and obligations of all States in accordance with the convention. Opposition to the inclusion of such a clause would run counter to pre-established legal norms and would inevitably lead to the formulation of reservations with all their foreseeable consequences.

59. The basic structure of the preamble, which referred to the purposes and principles of the United Nations as set forth

in the Charter, and also expressed the belief that the new law of the sea would contribute to the maintenance of international peace and security, was satisfactory.

60. Account should be taken of the useful proposals made in documents A/CONF.62/L.23 and 24.

61. In conclusion, he said that his delegation believed that the European Economic Community should be permitted to accede to the convention.

62. Mr. ARMALI (Observer for the Palestine Liberation Organization) said that the international community had long recognized the legitimacy of the struggle waged by oppressed peoples subject to the yoke of colonialism, racism, and foreign occupation. The Palestine Arab people, which was denied its right to self-determination by the Zionist entity of Israel, was under the direction of the Palestine Liberation Organization (PLO) and enjoyed the support of peace-loving and freedom-loving peoples. That support had been given practical expression in 1974 when the United Nations had granted to the PLO the right to participate, with observer status, in all international conferences. Since then, the voice of the Palestinian people had been heard in all international forums; and the PLO had always proclaimed its willingness to work for the promotion of international peace and justice. It should be remembered that the PLO was a full member of the League of Arab States, a member of the Congress of Islamic Countries and a member of the group of non-aligned countries and that, in July 1977, the Economic and Social Council had endorsed the decision of the Economic Commission for Western Asia to admit the PLO to full membership of the Commission. Furthermore, the PLO and other national liberation movements had been able to sign the Final Act of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law, which had prepared protocols additional to the Geneva Conventions of 1949. If the results of the Conference were to be universal in scope, it was only normal that national liberation movements should be granted the right to accede to the new convention on the law of the sea.

63. In conclusion, he thanked all delegations that had supported the proposal put forward in document A/CONF.62/L.26.

64. Mr. NORMAN (Angola) said that the convention being prepared should be universal in character and should apply to mankind as a whole. Justice would not be done if peoples struggling for the freedom of their territory were not allowed to accede to the convention. His delegation therefore supported those delegations that had proposed that the final clauses should contain a provision to the effect that national liberation movements recognized by the United Nations should be allowed to accede to the convention.

65. With regard to the question of reservations, he expressed the conviction that the Conference would do all in its power to ensure that certain countries were not obliged to enter reservations to certain provisions of the convention.

66. Mr. FARES (Democratic Yemen) expressed his support for the proposal in document A/CONF.62/L.29, which complemented the proposal in document A/CONF.62/L.26 of which his delegation was a sponsor.

67. The oceans and seas, as the common heritage of mankind, belonged to peoples as much as to States. The convention should, therefore, observe the principles of contemporary international law and guarantee full and comprehensive protection of the rights and interests of all peoples, including oppressed peoples and peoples under colonial or foreign domination which were represented by their national liberation movements. Those peoples should not be deprived of their equitable share in the common heritage of mankind and should be treated on an equal footing with States. They should, therefore, be entitled to sign the convention and to

enjoy their full rights under it, including the right of admission to membership of any international and regional bodies that might be established under the convention.

68. The question of reservations should be examined further. In any case, it would be difficult to take a decision on that question until final texts had been prepared for the substantive provisions of the convention.

69. The preamble should refer to certain generally accepted concepts, including the principles of the common heritage of mankind, the interest of the developing countries in the resources of the sea-bed beyond national jurisdiction, the peaceful use of oceans and seas, the protection and preservation of the marine environment, exploitation of the resources of the sea-bed in the interests of mankind as a whole, the need to establish a new international economic order, the link between such an order and the new régime for oceans and seas, the principle of the codification and gradual development of international marine law, and the right of all peoples as well as States to share in the common heritage of mankind.

70. Mr. HAMMA (Niger) said that the rights and interests of all States and all peoples would be affected by the convention. Unfortunately, there were still peoples which were enduring the horrors of colonialism and neo-colonialism. The international community had on many occasions recognized the legitimacy of the struggle of those peoples for freedom and dignity. The presence of certain national liberation movements at the Conference were evidence of that recognition. Thus, the principle of the right of peoples to self-determination had become part of positive law. In addition to that principle, there were other important principles, such as those relating to permanent sovereignty over natural resources and the equal rights of peoples. For those reasons, Niger considered it extremely important that, in the future convention, every step should be taken to safeguard the rights and interests of peoples still under foreign domination. His delegation therefore supported the proposals in documents A/CONF.62/L.26 and 29.

71. Mr. LUPINACCI (Uruguay) said that the preamble should help to facilitate the interpretation of the basic principles underlying the new law of the sea that was being prepared by the Conference. Interpretation of the convention would be difficult; there were very few preparatory documents that could be consulted, and the wording of many of the clauses would be complicated since account would have to be taken of the various interests to be covered. It was important, therefore, that mention should be made in the preamble of certain fundamental principles on which the new law of the sea would be based. Such principles included those relating to the peaceful use and rational exploitation of the seas and oceans, the preservation of the marine environment, the common heritage of mankind, the new international economic order, international social justice, the right to full development and the special rights of developing countries.

72. His delegation fully supported the suggestion that the substantive part of the convention should contain a precise definition of the principle of non-abuse of rights. In that connexion, the proposal by the Mexican delegation (A/CONF.62/L.25) deserved attention.

73. Turning to the final clauses, he said that his delegation agreed with those who believed that the European Economic Community should be allowed to accede to the convention. By so deciding, the Conference would acknowledge the new fact of international law that an entity could assume certain

functions transferred to it by its member States. However, the Community should not, of course, be entitled to become a member of the Authority or of its organs.

74. His delegation also supported the proposal in document A/CONF.62/L.29.

75. He suggested that discussion of the question of reservations should be postponed until a later date. His delegation would be reluctant to agree that reservations should be admissible and could not, in any case, agree that reservations to the provisions forming part of the basic "package deal" could be permitted.

76. The question of the relationship of the convention to the existing Geneva Conventions on the Law of the Sea should be very carefully examined. Reference could be made to the Vienna Convention on the Law of Treaties, but it should be borne in mind that that Convention had not yet entered into force. It might be necessary to consider the question of the replacement of the existing Geneva Conventions by the new convention.

77. Mr. VARVESI (Italy) said that his delegation supported the proposal that the European Economic Community should be allowed to become a party to the convention.

78. The representative of Chile had argued that, as the Conference was being conducted in accordance with the principle of consensus, only a very small number of ratifications would be required for the convention to enter into force. The Italian delegation would find it difficult to accept that argument, which did not take into account the difference between customary rules and conventional rules.

79. Mr. WITEK (Poland) said that his comments on the preamble and final clauses would be of a preliminary nature. It would be premature to express a final position on those clauses since the definitive texts of certain very important substantive provisions of the convention were not yet known.

80. The preamble and final clauses as drafted in the informal composite negotiating text were non-controversial and could be accepted by his delegation. The preamble should be very simple and should not give rise to controversy.

81. With regard to the final clauses, he expressed the view that the convention should be open to all States. His delegation supported the proposals to the effect that national liberation movements recognized by the United Nations should be entitled to participate in the convention. However, there were many difficulties in the way of giving international organizations the right to accede to the convention. That problem should be studied further. The Conference should not, however, exclude the possibility of devising a formula whereby certain international organizations with competence in matters covered by the convention could assume obligations under the convention.

82. With regard to the question of the entry into force of the convention, delegations should remember that the task of the Conference was to draft a convention that could be universally accepted. Both the substantive provisions and the final clauses should serve to attain the objective of universality of the convention.

83. The PRESIDENT said that the Conference had completed its preliminary discussion on the preamble and final clauses.