

Third United Nations Conference on the Law of the Sea

1973-1982

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162nd Plenary meeting

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draft convention by 30 April, and hoped that it would be adopted by consensus to give it the universality it deserved. In Uganda's view, the course of the negotiations had been such that in the final analysis no single delegation or group of dele-

gations could be said to have won or to have lost over any issue.

The meeting rose at 1.10 p.m.

162nd meeting

Wednesday, 31 March 1982, at 3.05 p.m.

President: Mr. H. G. ANDERSEN (Iceland)

Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973 (*continued*)

1. Mr. RAHMAN (Bangladesh) said that the vital question before the participants was whether the Conference had reached a stage at which the impasse on pending issues could be resolved and whether the proposals offered by the collegium improved prospects for completing the work of the Conference at the current session. The Group of 77 had repeatedly emphasized that the current session was the final, decision-making, session and that the approved programme of work laid down must be strictly adhered to. Its determination was inspired by the recognition that the draft convention emanating from the tenth session (A/CONF.62/L.78)¹ was the product of protracted and laborious negotiations and constituted a delicately balanced package of compromises on interlocking issues which had demanded sacrifices and concessions from everyone. The only amendments to it that could be entertained, therefore, were proposals for improving the text or removing the lacunae and suggestions which did not challenge the fundamentals already negotiated.

2. It was in that context that his delegation had welcomed the return of the United States to the negotiating table. It regretted, however, that, as they stood, the United States proposals constituted so radical and sweeping a set of amendments that they called into question all the major substantive aspects of the compromises that had been achieved on the provisions governing the sea-bed. They had inevitably been rejected as a basis of negotiations by the Group of 77 and, indeed by the great majority of countries at the Conference. Nevertheless, his delegation had noted with approval the statement of the Chairman of the First Committee, underscored by the President, that, although the negotiating phase of the Conference had ended, the door was not closed to further efforts to seek a consensus by 30 April, and that the collegium would make every possible effort to promote agreement in the weeks ahead. It had also noted the belief expressed by the Chairman of the First Committee that the group of 11's proposals for bridging the gap between the United States and other potential sea-bed users, on the one hand, and the Group of 77 and those who shared their concerns, on the other, might provide the nucleus of a broader agreement.

3. The positions of all participants on the question of the protection of sea-bed investments made by States and consortia before the entry into force of the convention had been clearly stated. There had been broad recognition that there should be some form of protection of the rights of States and private entities which had already invested in exploratory activities or which intended to do so in the near future. How-

ever, any scheme to that end must conform to the strict parameters laid down in the draft convention. The indispensable elements specified by the four sponsors of the proposal on preparatory investment protection (TPIC/2) were not compatible with the fundamental principles enunciated by the Group of 77 (TPIC/3). Nevertheless, his delegation felt that the proposal of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30, annex II) was a positive step forward.

4. The draft resolution on the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) provided an improved basis for seeking consensus. His delegation supported the mandate assigned to the Commission to study in greater depth the problems of land-based producers and the creation of a special commission for that purpose.

5. He noted that in addition to the matters which pertained to the area beyond the limits of national jurisdiction, there were matters affecting Bangladesh's basic national interests in respect of the ocean régime within those limits. The concern of Bangladesh to gain recognition of its claim to a bathymetric baseline as an exception to the norm, because of the unique geographical and geomorphological characteristics of its coastline, was well known. Similarly, on the issue of delimitation, the provisions of articles 15, 74 and 83 of the compromise text did not adequately define the methodology to be adopted in delimiting the maritime boundary and reaching an equitable solution, as demanded by the convention. Clearly, as the representative of Venezuela had pointed out, article 38 of the Statute of the International Court of Justice had relegated established precedents to a secondary status. The need to identify the relevant circumstances that would determine the delineation of the line leading to an equitable solution had a particular bearing on the case. Moreover, there must be uniformity in the principles governing delimitation, and article 15, concerning overlapping jurisdiction in the territorial sea, must be brought into conformity with articles 74 and 83. Furthermore, the provisions covering the settlement of disputes should cover pending disputes as well as future situations.

6. Such issues were critical for many of the participants. It was his delegation's expectation that due opportunity would be given in the course of the session to raise those issues, and to record the participant's positions and concerns. The status and the substantive content of the final act, and the means by which countries could reconcile and harmonize their national legislation and their positions with regard to the adoption of the convention, were vitally important. Given the critical time constraint, the topic should be addressed urgently.

7. Mr. CALERO-RODRIGUES (Brazil) said that one of the fundamental innovations in international law brought about by the Conference was to give concrete expression and meaning to the concept of the common heritage of mankind, enshrined in the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XV (United Nations publication, Sales No. E.83.V.4).

beyond the Limits of National Jurisdiction,² adopted on 17 December 1970. Part XI and annexes III and IV of the draft convention contained a series of provisions which struck a delicate balance between the requirements of the hard facts of international life and the aspirations of the world community to benefit equitably from the exploitation of natural resources belonging to all the peoples. That balance had been achieved through painstaking negotiations in which concessions had been made by all the parties concerned, not least the developing countries. The draft convention was a genuine compromise, about which all the participants had reservations but in which all recognized a potential for positive international co-operation in the management of the vital economic activities which were to be undertaken.

8. Brazil, like the rest of the Group of 77, was committed to the adoption of a convention on the law of the sea in accordance with the Conference's programme of work. It sincerely hoped that all countries would be able to join in the adoption of the convention and only a year earlier that outcome had appeared feasible. At a time when doubts were being expressed about whether the Conference would reach its goal of adopting a universal treaty, all the members of the Group of 77 could congratulate themselves on having pursued every available path capable of leading to consensus. If some delegations decided to isolate themselves and thus thwart the goal of universality, they would have only themselves to blame for being excluded from the international régime that would ultimately prevail for the various uses of maritime space.

9. Turning to the report on the work of the working group of 21 (A/CONF.62/C.1/L.30), he commended the President and the Chairman of the First Committee on their proposals for resolutions on the Preparatory Commission and on the treatment of investments made prior to the entry into force of the convention. His delegation associated itself fully with the views expressed by the Chairman of the Group of 77 on both proposals.

10. With regard to the treatment of preparatory investments, the Conference must ensure that in providing a degree of protection for those "pioneer" investors, it did not foil the objectives of the régime provided for in that connection and did not introduce a system which would in practice discriminate among potential pioneer investors. Paragraph 1 (a) of the draft resolution might well need to be further examined so as to widen the range of entities which would be entitled to benefit from the provisions of the resolution. Other possible adjustments might be made, and his delegation was of the view that consultations and negotiations should continue in order to arrive at as full an agreement as possible on that draft resolution as well as on the proposal dealing with the establishment of the Preparatory Commission (A/CONF.62/C.1/L.30, annex I). Since both formulations had been submitted as draft resolutions, the consultations and negotiations could be conducted without interfering with the programme of work.

11. His delegation shared the general view that the balance of compromises achieved in the other parts of the convention should not be upset. That did not preclude the acceptance of some proposals that could, without altering the balance, improve the text; that was the case with the United Kingdom proposal to amend article 60, paragraph 3 (C.2/Informal Meeting/66). There were other proposals of the same nature which merited acceptance, such as the proposal of the delegations of Brazil and Uruguay on article 60, and the proposal of a number of delegations on the passage of warships in the territorial sea (art. 21) (C.2/Informal Meeting/58/Rev.1). Both formulations merely brought forth more clearly concepts that were already implicit in the draft convention.

12. He paid a tribute to the work of the Drafting Committee but expressed misgivings regarding the suggestions included in the letter of the Chairman of the Third Committee to the President (A/CONF.62/L.88), some of which did not command general support within the Drafting Committee. He was referring in particular to the suggested amendment to article 210, paragraph 4, which had been opposed throughout the negotiating process by several delegations including that of Brazil. Proposals of that kind would alter the existing text substantially and could not be said to contribute to achieving harmony and uniformity.

13. Regarding the report of the President on the question of participation in the convention (A/CONF.62/L.86), he said that the President's proposals seemed to strike the proper balance and offered a way out of the impasse reached in the consultations. While his delegation was not entirely satisfied with the solution recommended and would be prepared to give the national liberation movements a wider role in the convention, it recognized that full participation would create insurmountable legal difficulties. However, it considered that the movements should be allowed to sign the convention, on the understanding that the exercise by them of the rights and obligations it entailed would be deferred until they were in a position to assume those obligations fully and to exercise those rights. It was nevertheless prepared to accept the President's formula.

14. On the other compromises suggested by the President, he said that internal adjustments designed to allow the participation of intergovernmental organizations, especially those deriving from articles 4 and 5 of annex IX proposed in annex I of the report, should be made by the organizations themselves, without transferring the problem to the framework of the convention. It was also his delegation's understanding that the signing of the final act by the national liberation movements confirmed not only that they had taken part in the preparation of the convention but also that they were potential parties to it, and that as soon as they acquired powers to exercise competence on the matters governed by the convention they would be accepted as parties on the same footing as all other States. The draft resolution in annex III on safeguarding the rights and interests of non-self-governing peoples would have to be scrupulously implemented by the Preparatory Commission and by the Authority. The compromise thus accepted by the Group of 77 on the question of participation was a necessary part of the global compromise.

15. Mr. GAUCI (Malta) said that the Conference's success in keeping to the agreed programme of work strengthened his delegation's conviction that the goal would be achieved and that the marathon collective labours of the participants would ultimately give expression to the concept first enunciated by Malta 15 years earlier.

16. His delegation adhered completely and without reservation to the positions adopted by the Group of 77. Any amendments to Part XI should not undermine the philosophy of the common heritage or the structure giving adequate and equitable expression to that philosophy. His delegation had consistently urged that mutual accommodation, compromise and shared labour should be the guiding rules for attaining the objectives. The Declaration of Principles of 1970 had been a model exercise in the successful accommodation of diverse interests, and the spirit which had guided delegations then should be revived. The Group of 77 had repeatedly made wise concessions in order to facilitate agreement. Those concessions had produced their desired effect when a general consensus had been reached in 1980. His delegation therefore appealed to those delegations which had held the Conference in abeyance for a whole year to be more reasonable in their demands so that the process of mutual accommodation would continue. Although the formal period for negotiations was

² General Assembly resolution 2749 (XXV).

over, agreement could be reached in any forum, provided expectations were tempered.

17. The President's proposals on the question of participation in annex III of document A/CONF.62/L.86 were acceptable as the basis for a compromise solution. Improvements were always possible, however, and his delegation felt that an effort should be made with regard to annex II of that document, to express in a more satisfactory manner in the convention the democratic role of the national liberation movements which had participated in the Conference.

18. On the two resolutions contained in the report on the work of the working group of 21 (A/CONF.62/C.1/L.30), his delegation associated itself with the statement of the Chairman of the Group of 77 (158th meeting). Further attempts at accommodation in order to produce a text that would be satisfactory to all were still possible. On the question of preparatory investments, he said that nothing contained in the proposed scheme should go against the spirit or be inconsistent with the provisions of the convention. The draft resolution as it stood gave a framework within which a régime for the treatment of preparatory investment could be worked out. That would be acceptable to the international community.

19. Although the outstanding matters relating to the régime for the exploration and exploitation of the Area had attracted the most attention at the current session, a number of other issues were still outstanding. One of them, of particular interest to small countries, concerned the innocent passage of warships through the territorial sea. It was still pending not only in the sense that it was unresolved but also in that it had not been the subject of sufficient negotiations in the past. The Chairman of the Second Committee should be thanked for having taken the initiative of organizing consultations at the current session on an appropriate amendment to article 21. It could be argued that the draft convention did recognize the right of coastal States to enact national legislation regulating the innocent passage of warships through their territorial sea in order to protect their security. His delegation upheld that interpretation, and it was on that basis that his Government had enacted national legislation to regulate the innocent passage of warships through Maltese territorial waters. Experience had shown, however, that others could hold a different view. The matter was one of great importance and could give rise to serious disputes about the interpretation of the convention. His delegation, as co-sponsor with 26 other delegations of the proposal contained in document C.2/Informal Meeting/58/Rev.1, would favour an amendment to article 21 for the sake of clarity. However, it would also consider compromise proposals, provided they increased the clarity of the text.

20. As the Conference approached the end of its labours, it was naturally tending to concentrate its efforts on the difficulties that remained. However, it should not overlook the many solutions that had been found. Through the President's endeavours, the friendly competition between Malta and Jamaica for the site of the International Sea-Bed Authority had been amicably resolved. He congratulated the Jamaican delegation once again, and reiterated his own Government's willingness to serve as host for any future international organization that might be established in accordance with article 156 or any other institution, for that matter. His Government was prepared to extend to such an organization the same facilities and conditions as it had offered to the International Sea-Bed Authority.

21. Mr. KAUSHAL (India) said that he was deeply impressed by the enormous achievements of the Conference. He was sure that the new legal framework would be durable and would protect the legitimate interests of coastal and other States all over the world, as well as promote international co-operation.

22. Turning to the recommendations and specific proposals of the President and the Committee Chairmen, he said that his delegation broadly agreed with the draft resolution establishing the Preparatory Commission and the International Tribunal (A/CONF.62/C.1/L.30, annex). It also broadly agreed with the draft resolution governing preparatory investment in pioneer activities (*ibid.*, annex II). The contribution made by pioneer investors in promoting sea-bed mining within the framework of the draft convention would be recognized and encouraged by its provisions and the industrialized States would be assured of access to the resources of the area in an orderly and regulated manner, without creating a monopoly and within the discipline of production limitation. Pioneer activities would, moreover, be restricted to exploration.

23. His delegation would suggest, however, that the definition of a pioneer investor in paragraph 1 (a) of the draft resolution, while taking into account the fact that, as matters stood, sea-bed surveys were being conducted by industrialized States or their entities, should not close the door to possible participation by developing countries. He referred to a paper circulated a few days ago containing a list of six entities and the Soviet Union which were engaged in activities of sea-bed surveys. It was mentioned therein that the paper was issued solely for the purpose of providing information and that it may be subject to correction. Speaking for his country he said that although India was a developing State, it had already taken steps towards effective participation in the surveying and eventual exploitation of the resources of the sea-bed, which were the common heritage of mankind, under the effective control of the International Sea-Bed Authority. In January 1981 a research vessel of the Indian National Institute of Oceanography had recovered polymetallic nodules from a depth of 5,000 metres in the Indian Ocean. A group of research and other institutions in India was engaged in planning and conducting a survey of a specific area in the Indian Ocean, as well as in the associated development of technology and economic feasibility, and India had already spent several million United States dollars on that effort, in addition to the cost of ships. Encouraging the developing countries, either individually or in groups, would promote the effective application of the convention to all States without discrimination, and would prevent a monopoly in the hands of a few industrialized States or their entities. He proposed, therefore, that the Group of 77's suggestion on that subject (A/CONF.62/L.116), namely, that the date of eligibility for developing countries should be linked to the date of entry into force of the convention, should be adopted. The position of developing countries should be the same as that of the other pioneer investors and not inferior to it.

24. His delegation fully supported the provision that, in the case of all pioneer investors, the sponsoring State should have signed the convention, and that their activities should be regulated by the convention on the law of the sea as a whole, even before its entry into force.

25. The draft resolution should also be so phrased as to cover all resources of the Area and not polymetallic nodules alone. The size of the pioneer area, given in paragraph 1 (e) as not exceeding 150,000 square kilometres, could be left for the Preparatory Commission to determine on the advice of experts. The reference to article 151, paragraph 2 (c), in paragraph 9 of the draft resolution might be deleted, so that the priority assured to pioneer investors would not apply in relation to applications by the Enterprise and would not be limited to one site reserved for the Enterprise.

26. Turning to the question of participation, he said that his delegation broadly agreed with the package in annexes I, II and III of document A/CONF.62/L.86. His Government's emotional and political support for the interests of national liberation movements was well known, and the steps proposed

in annex II would promote their interests. His delegation felt, however, that specific reference should be made to the eligibility of the Council for Namibia as a party to the convention, since it was participating in the Conference as a full member with the right to vote. That could be done by amending article 305 or by adding a new annex which would relate specifically to the Council for Namibia.

27. On the matters within the jurisdiction of the Second Committee, his delegation agreed broadly with the statement in the report of the Chairman (A/CONF.62/L.87) that the proposal by the United Kingdom concerning article 60, paragraph 3, had received general support in the Committee and could therefore be included in the draft convention. His delegation felt, however, that the question of the innocent passage of warships through the territorial waters of a coastal State should be further examined and that the requirement of prior notification should be specifically mentioned in article 21 in order to protect the legitimate security interests of the coastal State. Also in that connection, he said that it was his Government's conviction that a group of islands which was an integral part of the territory of a sovereign State should be entitled to the status of an archipelago and that no distinction should be made between an archipelagic State and a group of islands of that type. Furthermore, a coastal State should be entitled to enclose a cluster of installations on its continental shelf or in its exclusive economic zone into a special area under its national jurisdiction in order to protect its living and mineral resources and to prevent any incidents which might endanger its marine environment. Article 211, paragraph 6, of the draft convention went only halfway towards meeting that concern.

28. In conclusion he wished the President and the Conference success in the days ahead and trusted that the session would conclude its work with the adoption of a convention on the law of the sea.

29. Mr. MUNTASSER (Libyan Arab Jamahiriya) thanked the President and the Chairmen of the Committees for their proposals which were an important step towards the fulfilment of the session's programme of work and would contribute greatly to the entry into force of a new international economic order for the benefit of all mankind.

30. He drew attention to a report in *The New York Times* of 31 March 1982, in which the United States delegation was quoted as having expressed optimism that the themes of concern to the United States Administration would be dealt with in a pragmatic way, and the Chairman of the Group of 77 was quoted as having said that the compromise had been devised to accommodate the industrial Powers' interests first and foremost. He trusted that that was not in fact the case, as it would be a violation of the principles of the package already accepted, as well as the Conference's rules of procedure.

31. With regard to the work of the first three weeks of the session, document A/CONF.62/C.1/L.30 contained only the results of consultations and negotiations on the establishment of the Preparatory Commission and the régime governing preparatory investments, and two draft resolutions on those subjects. All the other proposals submitted to the working group of 21 had been neglected yet, according to document A/CONF.62/62,³ all proposals should be given equal treatment. The Chairman of the First Committee had confirmed that that had not been the case when he had explained why the proposals submitted by the 11 industrialized countries (TPIC/5) had been rejected after negotiations in which a minority of developing countries had participated on an individual basis. All of the above confirmed that it had not been

possible to submit new amendments to the draft convention, under the procedure agreed to in document A/CONF.62/62, unless they related to the two draft resolutions. He hoped that there would eventually be general agreement on those draft resolutions since they could not be deemed to be governed by A/CONF.62/62 and should therefore be considered informally in the plenary or in the First Committee.

32. If the two draft resolutions were to reflect all the views of the Group of 77, they must incorporate the following changes: the wording of the resolution establishing the Preparatory Commission must be improved in order to make it clear that there was indeed a provisional body that could make recommendations which the Authority would approve when it came into being. Paragraph 8 of the draft resolution should be reworded to make it clear that the special commission set up by the Preparatory Commission was a subsidiary body, the members of which were to be chosen by the Commission itself. A new paragraph should be added to the draft resolution giving the Commission power to set up a special commission to consider the question of a compensation fund so that such a fund could come into being when the convention entered into force. The draft resolution governing preparatory investment must make it clear that the advantages accorded to pioneer investors were of an interim nature only. In subparagraphs 1 (a) and (b), the definitions "pioneer investor" and "pioneer activities" must be amplified along the lines of the title of the resolution to make it quite clear that companies were not free to explore and exploit metals not contained in polymetallic nodules. A sentence should be added to paragraph 2 to show that registration was possible only if pioneer investors accepted the rules established by the Preparatory Commission to govern activities in the Area, in order to ensure that those companies operated in accordance with the convention. Paragraph 6 should be deleted so as to make it clear that pioneer investors should not have any rights in the Area in the provisional stage until they were so authorized. Paragraph 8 should be amended to make it clear that any application by an investor to conduct exploration or exploitation activities in the Area must be approved in accordance with the rules established by the Authority and could not be approved automatically. Paragraph 10 (b) should be deleted to prevent any possibility of companies pressing their home States to accede to the convention. With regard to subparagraph 12 (a), pioneer companies should be able to operate in the reserved area so that they could detach specialized personnel and sell equipment to the Enterprise or the Preparatory Commission on a provisional basis. Paragraph 13 should be amended so that the relationship between the resolution and the convention was quite clear. Paragraph 14 should be amended to provide that the resolution would remain in force until the convention entered into force.

33. The report on the Second Committee's work (A/CONF.62/L.87) indicated that consultations on the innocent passage of warships through the territorial sea had produced no results. He believed that, had the proposal put forward by 27 countries, including the Libyan Arab Jamahiriya, been considered thoroughly and negotiated seriously, article 21 of the draft convention could have been improved. There was a clear difference of intention between the passage of warships and the passage of merchant ships, and a country must be able to monitor its coastline in the event of the passage of warships. There were well-established international rules governing the innocent passage of warships, including the requirement that such passage be subject to prior authorization or notification. Like most delegations, he agreed that the draft convention could not be interpreted as preventing States from regulating the passage of warships through their territorial sea but believed that the relevant provisions should be amended in order to avoid any complications arising from possible misinterpretations.

³ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

34. His delegation believed that the régime governing islands had been given insufficient consideration and, in particular, that the study on that régime should make a distinction between islands situated in closed seas and islands in open seas.

35. With regard to the question of participation, like other members of the Group of 77 his delegation believed that national liberation movements should be allowed to participate fully in the convention. While he appreciated the President's efforts to reach a compromise on that issue, the solution proposed did not appear to open the way for a compromise that would be satisfactory to the Group of 77. National liberation movements must be able to sign both the convention and the final act and to participate in the deliberations and meetings of the Authority and its organs.

36. Finally, his delegation believed that pending issues must be dealt with within the overall package and on the basis of mutual concessions. The developing countries had made numerous concessions and he hoped that other countries would do the same with a view to overcoming existing differences.

37. Mr. MARAGAU (Papua New Guinea) observed that the reports submitted to the 157th meeting had recorded sufficient progress for consensus to be achieved on the subjects concerned. His delegation endorsed fully the comments made by the Chairman of the Group of 77 to that effect.

38. In general, his delegation could support the proposals contained in document A/CONF.62/L.86, in particular the provision allowing for all self-governing associated States to sign the convention on their own behalf. That would be particularly helpful to the Cook Islands and Niue and the trust territories of the Pacific Islands. His delegation urged that the proposal with regard to participation by national liberation movements should be accepted as a basis for consensus. His delegation, for its part, could accept it as it stood. With regard to participation by intergovernmental organizations, his delegation continued to believe that only those States which signed the future convention should benefit from it. It would be bad faith for countries to refuse to sign the convention and then benefit from it through membership in an intergovernmental organization. He hoped that any consensus on the issue would reflect that concern.

39. With regard to the report contained in document A/CONF.62/C.1/L.30, his delegation believed that any consensus that was reached must ensure that the interests of land-based producers, particularly developing land-based producers, of the metals in question were adequately safeguarded. He was not confident that paragraph 5 (*i*) of the draft resolution in annex I met that concern. His delegation hoped that, at the least, all developing countries that were land-based producers and were affected in any degree would qualify automatically for the studies of the Preparatory Commission. Those studies should not be confined to the most seriously affected countries, and any compensatory measures must extend to all affected land-based producers. His delegation believed that participation in the Preparatory Commission should be limited to those States which were genuinely prepared to be bound by the convention and that that criterion should override the criterion of signature of the final act or the convention since, in some cases, small developing countries might not, for administrative reasons, be able to sign the convention early enough and it would be unfair to deny them the right to participate in the Commission on those grounds alone. With regard to the draft resolution contained in annex II, his delegation believed that a pioneer area not exceeding 150,000 square kilometres was unreasonably large. As many investors as possible should have access to pioneer areas, especially when the resources found there were intended to be exploited for the benefit of mankind as a whole.

40. With regard to the report contained in document A/CONF.62/L.87, his delegation believed that the question of innocent passage required special treatment and proper negotiation. Twenty-seven States had now proposed that article 21 should be amended to protect the security interests of coastal States, and the issue could not simply be buried. If left unresolved, it might affect the universality of the future convention. His delegation did not, however, interpret the text of the draft convention as impinging on the right of coastal States to regulate navigation within the limits of their territorial waters. Numerous coastal States, including some major Powers, had national legislation which gave them that right and the convention could hardly be interpreted differently.

41. With regard to the report contained in document A/CONF.62/L.88, his delegation believed that in the drafting change proposed to article 194, paragraph 4, the word "pursuance" should be replaced by "performance". The amendment proposed to article 196, paragraph 1, was still not clear and might be reworded to read "within the areas of their jurisdiction and control". His delegation could not accept the amendments proposed to articles 213 and 214: the words "protection and preservation" had a special meaning and should not be replaced. It likewise could not agree to the amendment proposed to article 216, paragraph 2. If the intention of that amendment was to link that paragraph to article 218, the paragraph should read "No State shall be obliged to institute proceedings in accordance with article 218 when another State has already instituted proceedings by virtue of this article". His delegation had no serious objection to the redrafting proposed for article 222, but believed that the article should refer first to the adoption of rules and regulations and thereafter to enforcement mechanisms.

42. In conclusion, he wished to observe that all countries were important to the survival of mankind and that it would be regrettable for one nation to think that it was more important than the others and that its position alone should be safeguarded. The resources of the ocean belonged to mankind as a whole. It was surely not asking too much to expect advanced developed countries to give a little in order that the international community might adopt a universally agreed convention on the law of the sea.

43. Mr. YANKOV (Bulgaria) said that the programme of work adopted for the session (A/CONF.62/116)¹ had not only been a procedural tool but had acquired political significance in view of the continuing difficulties confronting the Conference as a result of the unprecedented decision by the United States Administration to revise that country's position on all basic elements of the deep sea-bed mining régime provided for in the draft convention. The programme of work had been a clear expression of the determination of the vast majority of delegations to support the fundamental principles of the Declaration of Principles of 1970 contained in General Assembly resolution 2749 (XXV) and of their determination to resist the reopening of negotiations on provisions already agreed upon by the Conference and to bring the Conference to a successful conclusion at the current session. In his delegation's view, all necessary conditions were at hand for the adoption of the draft convention by 30 April 1982.

44. In that connection, he wished to pay a tribute to the President for his perseverance in guiding the negotiating process and in contributing to the drafting of the reports before the Conference. His delegation concurred with the President's understanding, expressed in document A/CONF.62/L.86, that the three outstanding problems relating to participation in the convention, namely participation by national liberation movements and intergovernmental organizations and the transitional arrangements for dependent territories, constituted a package which must be seen as a compromise based on equal treatment of the concerns of all interested parties. His delegation could support the proposals

as a compromise solution on that understanding. At the same time, he wished to reiterate his Government's firm support for national liberation movements recognized by the United Nations and its belief that liberation movements such as the Palestine Liberation Organization should be able to participate in the convention on an equal footing with States and other entities in order to represent fully the interests of their people and to act on their behalf with regard to problems arising within the scope of the convention.

45. His delegation continued to believe that all member States of an intergovernmental organization must become parties to the convention before the organization itself could accede to it. There should be no ambiguity or legal loopholes which might allow States that were not parties to the convention to benefit from it through their membership in an international organization. The new formulations of article 4, paragraphs 4, 5, 6 and 7, proposed in document A/CONF.62/L.86 in annex I should be read in conjunction in order to take care of those problems. Improvements were also required in the provisions governing denunciation. Finally, his delegation would prefer to see the transitional provision included in the body of the convention.

46. With regard to document A/CONF.62/C.1/L.30, it was due to the understanding displayed by and the efforts of the Group of 77, the socialist States of Eastern Europe and a number of other industrialized States that the compromise proposals in the draft resolution in annex II went a long way towards meeting the concerns of the industrialized countries which were seeking protection for pioneer investment. His delegation could support the scheme proposed in the draft resolution on the understanding that it was conceived as an arrangement based on the régime instituted by the draft convention and provisional in nature. While his delegation endorsed the ideas underlying paragraph 12 of the draft resolution, it believed that its provisions required elaboration in order to clarify their financial implications.

47. His delegation supported the draft resolution contained in annex I, which provided a good basis for a compromise solution, in particular the new provision on decision-making. At the same time, the latter provision should be developed to provide for the rules, regulations and procedures of the Authority to be adopted by the Preparatory Commission by consensus. That would greatly enhance the prospects for consensus on the draft resolution.

48. His delegation welcomed the conclusion stated in paragraph 13 of the report by the Chairman of the Second Committee (A/CONF.62/L.87), which reflected faithfully the prevailing mood of the Conference. All questions within the mandate of the Second Committee had been resolved on the basis of compromise, and mutual accommodation and concession had paved the way for agreement. It could not be denied, however, that concessions had not always been even-handed and that a number of countries had not always been given fair and equitable treatment. That was especially so with regard to land-locked and geographically disadvantaged States with limited living resources whose national economy depended heavily on fisheries and which had made significant investments in distant fishery areas. His delegation, representing one such country, could support the existing text provided that there were no changes which adversely affected other uses of the sea, including international navigation.

49. In that connection, his delegation upheld the view that freedom of navigation was one of the pillars of the whole system of maritime law and that any attempt to limit or obstruct it would be unacceptable. It therefore opposed continuing attempts by some delegations to amend article 21 which, in conjunction with articles 19 and 22, provided adequate guarantees for the security of coastal States. Those articles were clearly a great improvement over the corresponding provisions of the 1958 Geneva Convention. The proposals to

alter article 21 did not meet the requirements of document A/CONF.62/62, and his delegation therefore fully supported the conclusion of the Chairman of the Second Committee on that matter.

50. The Conference's formal adoption of the negotiated draft convention was eagerly awaited by Governments and the general public. All the conditions for its adoption at the current session existed and delegations had the will to achieve that common objective.

51. Mr. AL-HADDAD (Bahrain) welcomed the many positive aspects of the draft resolutions in document A/CONF.62/C.1/L.30 relating to the Preparatory Commission and preparatory investments respectively, as a useful step in the direction of consensus. However, there were still certain shortcomings in the provisions and he hoped that, through negotiation and consultation, it would be possible to correct them, so as to achieve the aim of guaranteeing the rights of the least developed countries.

52. His delegation firmly supported the proposals made by the Chairman of the Second Committee in document A/CONF.62/L.87. Nevertheless, there remained certain issues requiring further discussion by the Conference, in particular the question of the innocent passage of warships through the territorial sea. The present text of article 21 of the draft convention was not acceptable because it represented a threat to the security and peace of coastal States, particularly the smaller ones. It was essential for prior authorization to be required before a vessel entered the territorial sea and for vessels to be governed by the regulations of the coastal State concerned.

53. On the issue of participation in the convention, his delegation was committed to the resolution adopted by the Group of 77 concerning the entitlement of national liberation movements to sign the final act and the convention. However, it would be prepared to accept the compromise solution proposed by the President in document A/CONF.62/L.86 on condition that national liberation movements were provided with effective means of receiving all communications and documents and were entitled to make submissions to the International Tribunal for the Law of the Sea.

54. Mr. SCOTLAND (Guyana) said that his delegation supported the recommendations of the Chairman of the Drafting Committee in document A/CONF.62/L.89, concerning the future work of the Committee. It could also accept the drafting amendments recommended by the Chairman of the Third Committee in document A/CONF.62/L.88.

55. One of the most difficult issues of the Conference had been that of the delimitation of the exclusive economic zone and the continental shelf. Although articles 74 and 83 of the draft convention did not fulfil all the expectations of his delegation, they nevertheless appeared to offer improved prospects for consensus. In that spirit, and in particular in view of the comment of the Chairman of the Second Committee that it would not be desirable to reopen fundamental issues (A/CONF.62/L.87, para. 4) and thus disturb the balance achieved through generally accepted solutions of compromise, his delegation saw those two articles in their present formulation as the indispensable minimum if consensus on that issue was to be achieved.

56. In connection with the issue of the innocent passage of warships through the territorial sea, his delegation supported the addition of a new subparagraph (b) to paragraph 1 of article 21, as recommended in document C.2/Informal Meeting/58/Rev.1. Internationally recognized and respected rules represented a safeguard for small States lacking the ability effectively to protect their waters from unauthorized intrusions, and he welcomed any provision which placed in their proper perspective the legitimate concerns of the vast majority of coastal States, including his own, and the perceived "world security" concerns of a few States.

57. The treatment of the question of stocks and their conservation in article 63 of the draft convention was not entirely satisfactory. A coastal State should be enabled, in the absence of agreement, to take conservation measures for the protection of straddling stocks occurring both within its exclusive economic zone and in an area beyond and adjacent to the zone, and his delegation supported the efforts of those delegations which were seeking to resolve the difficulty raised by paragraph 2 of that article.

58. The new formula proposed by the United Kingdom to deal with the question of the removal of abandoned and disused installations or structures was an improvement on the original text and should be included in article 60, paragraph 3, of the convention.

59. Although it believed in the need for such amendments as those mentioned above, his delegation agreed with the conclusion of the Chairman of the Second Committee that there was a real consensus on the need to preserve the fundamental elements of the parts of the convention within the competence of the Second Committee and that, except for very few issues, the current text constituted a satisfactory solution of compromise.

60. The draft resolution in annex I of the report of the coordinators of the working group of 21 (A/CONF.62/C.1/L.30) represented a marked improvement in the treatment of the question of the Preparatory Commission and should be supported as a very important contribution to the efforts being made to reach a consensus. Particularly important were the provisions of paragraph 2, which provided for universal membership of the Commission but limited participation and decision-making to those States which had, by their signature of the convention, given an earnest of their intention not to act in a manner contrary to the object and purpose of the convention. His delegation noted with approbation the fact that arrangements for the accommodation of the Preparatory Commission in Jamaica were already well under way and trusted in the assurances, repeatedly given by the delegation of Jamaica, that all the necessary facilities would be established to ensure the prompt, smooth and efficient functioning of the Commission. He congratulated the Government of Jamaica on its dispatch in approaching this question and on the level of preparedness it has already achieved in its arrangements to accommodate the Preparatory Commission.

61. The draft resolution in annex II to the same document was a bold attempt to tackle the issue of the protection of preparatory investment, of particular importance to industrialized States. The many positive elements of the draft resolution included, in particular, recognition of the realities of the current situation of deep sea-bed mining, guarantees that the pioneer investor could continue exploration and the establishment of a cut-off date for the creation of a separate class of sea-bed miner. However, there were also a number of issues which gave cause for concern and required further consideration. First, his delegation was unhappy with the limitation of the resolution to polymetallic nodules when article 133 of the draft convention used a much broader term, "resources", with an appropriate definition. Secondly, paragraph 1 required revision: in subparagraph (a) there should be a different cut-off date for developing countries, since no such country was at present in the position of a pioneer in deep sea-bed mining; and, in connection with subparagraph (e), since there were no objective criteria for determining the pioneer area, it should be determined by the Preparatory Commission. Thirdly, there was a need to make the role of the Preparatory Commission, and later the Authority, unambiguous, particularly in the context of paragraphs 5 (a) and 8 (a). Fourthly, there was a need to examine the paragraphs relating to sponsorship in the context of article 190 of the convention concerning the participation and appearance of sponsoring States parties in proceed-

ings; and, lastly, paragraphs 13 and 14 required clarification and further examination.

62. The concern of land-based producers to receive protection from the harmful effects of sea-bed mining was no less important than the protection of preparatory investments. The inadequacy of the provisions of article 151 compelled land-based producers to seek additional safeguards; his delegation did not consider that establishing a compensation fund, as envisaged in the draft resolution on the Preparatory Commission (*ibid.*, annex I), while at the same time weakening further the safeguards of article 151, was an appropriate manner of reaching consensus and it therefore supported the proposal of the Group of 77 contained in document WG.21/Informal Paper 23.

63. Progress on the question of participation in the convention had fallen far short of the hopes of his delegation in two important respects, namely, the positions of national liberation movements and non-self-governing territories. His delegation could at this stage only acquiesce in the view expressed, that these texts offer an improved prospect for consensus in the hope that further discussion will provide more acceptable texts on these two issues.

64. Mr. RABETAFIKA (Madagascar) said that his delegation agreed with the Group of 77 that the draft resolution establishing the Preparatory Commission (*ibid.*) offered improved prospects of achieving a consensus. However, it shared the view of a number of other delegations that there should be a special sub-commission, similar to that established for the Enterprise, to study the potential problems of developing land-based producing countries, referred to in paragraph 5 (i) of the resolution.

65. The draft resolution governing preparatory investment (A/CONF.62/C.1/L.30, annex II) had serious defects: the definition of "polymetallic nodules" did not accord with that suggested by the Group of 77 (TPIC/3); the inclusion of paragraph 5 deprived the Preparatory Commission of the right or the opportunity to resolve the question of overlapping; the proposed financial terms of the contracts were ill-conceived, and the provision of article 7 (a) concerning the fee of \$US 500,000 should be replaced by the relevant provision of article 13 of annex III of the convention; paragraph 8 (a) should be redrafted so as to state that the Authority should approve an application for a plan of work for exploration and exploitation in accordance with the convention; his delegation had serious difficulties with paragraph 10 (b) which, as it stood, would encourage entities to change their nationality and use flags of convenience, a practice already rejected by the Group of 77; and, lastly, paragraph 14 was unacceptable because it effectively sanctioned unilateral sea-bed mining arrangements, while his delegation believed that the solution suggested by the Group of 77 in document TPIC/3 was more appropriate.

66. As far as matters within the competence of the First Committee were concerned, his delegation was prepared to consider specific new proposals provided that they did not involve reopening of the debate on fundamental issues and that they complied with the Conference's timetable in document A/CONF.62/L.116. At the same time, he wished to reaffirm his delegation's whole-hearted endorsement of the stand of the Group of 77 on all the most important issues.

67. As to the question of participation in the convention, his delegation's position had always been that the national liberation movements should be able to enjoy full participation in the instruments and institutions of the law of the sea. The solution offered for that problem was therefore not fully satisfactory. A new subparagraph (f) should be added to article 305, making explicit mention of national liberation movements, while at the same time specifying that the status of those movements was *sui generis*. Further, he questioned the

rather narrow approach of limiting access to the convention to those movements which had taken part in the work of the Conference.

68. In connection with the question of the participation of international organizations, the proposals of the President in document A/CONF.62/L.86 met his delegation's concerns and those of the Group of 77. However, he questioned whether there was a genuine balance in practice between the provisions of article 1 and article 8, paragraph (c) (i), of annex IX; a literal interpretation of those provisions yielded the conclusion that even if all but one of the member States of an organization which had acceded to the convention subsequently denounced it, not just the State which had not denounced it but also the organization itself, in spite of the defection of the majority of its members, remained a party to the convention. Secondly, and following on from the previous point, the meaning of the provisions of article 5, paragraph 4, of annex IX required some clarification. He did not see how in practice a State which had itself not signed or had possibly even denounced the convention, while at the same time remaining a full member of an intergovernmental organization which was a party to that instrument, could fail to derive some benefit, either actively or passively, from the convention. In view of those considerations, it might be useful to consider the introduction of a rule similar to that in Article 103 of the Charter, to the effect that the convention should prevail, in matters governed by it, over the constituent instruments of intergovernmental organizations parties to that convention.

69. There were also financial implications involved in the participation of an intergovernmental organization; it was not clear what would be the nature of the financial obligations of those organizations or, indeed, of any other party.

70. Lastly, the participation of international organizations also raised a number of problems of interpretation in connection with the settlement of disputes. In the context of article 287, paragraph 1 (sub-paragraphs (a), (b), (c) and (d)), he questioned whether it was entirely appropriate to give an organization exactly the same rights as States in terms of free choice of means and whether in fact any problems would arise if a certain settlement procedure were to be made mandatory in a dispute in which an organization was involved. Article 7, paragraph 3, of annex IX (A/CONF.62/L.86, annex I) also called for comment: the use of the possessive "*ses*" before "*Etats membres*" in the French text did not seem to tally with the English version, which used the definite article "the". More important, he wondered what would happen in the event that the member States which were joint parties with the international organization to a dispute did not choose the same settlement procedure.

71. With respect to the transitional provision, he wondered what objection there could be to using the form of a binding decision, similar to that proposed for the national liberation movements in annex II of document A/CONF.62/L.86, instead of the resolution, without binding force, proposed in annex III of that document.

72. With respect to the work of the Second Committee, his delegation continued to believe that it would be risky to disturb the balance of the fundamental provisions within the competence of that Committee. However, certain amendments were still possible, and his delegation supported the general feeling that new provisions should be drafted for article 60, paragraph 3, and article 63, paragraph 2. He supported the drafting changes proposed by the Chairman of the Third Committee (A/CONF.62/L.88), which served to make the text clearer.

73. Finally, he emphasized his delegation's willingness to respond to the appeal made to the Conference by the Chairman of the Drafting Committee.

74. Mr. MAUALA (Solomon Islands) said that his delegation fully supported the inclusion in the revised arrangements relating to participation in the convention of a provision concerning the participation of associated States and territories; those entities had been found to meet the requirements set by the Conference and to have full competence over the matters governed by the convention, including the competence to enter into treaties on such matters.

75. Mr. CHINHENGO (Zimbabwe) emphasized the importance which his delegation attached to the provisions governing activities in the international Area. The exploration and exploitation of the resources of the Area must be conducted in an orderly way and the availability of minerals from the Area should be carefully balanced with that of land sources in order to maintain prices at a fair and stable level and to ensure that developing land-based producers were not adversely affected in terms of volume of production, earnings or market share. For those reasons, his delegation regarded the production control mechanism as the single most important provision of Part XI and fundamental to the Convention as a whole. Any attempt further to erode the formula must be firmly resisted; as it stood, it was the best and the only acceptable compromise.

76. It was gratifying that the draft convention incorporated provisions relating to compensation for developing States suffering adverse economic effects as a result of mining activities in the Area. In order to guarantee that those provisions had practical effects, his delegation agreed with the suggestion that the Preparatory Commission should, at the very outset, undertake studies on the matter, and had proposed the establishment of a special sub-commission for that purpose. In addition, it would like to see developing land-based producers represented on the Economic Planning Commission and the Legal and Technical Commission, as proposed by the Group of 77. In that context, he warmly commended the efforts of the Group of 77 to assist developing land-based producers; its compromise proposals were a sound basis for consensus and, in particular, the addition of subparagraph (i) to paragraph 5 of the draft resolution establishing the Preparatory Commission (A/CONF.62/C.1/L.30, annex 1) was very welcome.

77. On the question of the treatment of preparatory investments, his delegation wished to associate itself with the statement made by the Chairman of the Group of 77 (158th meeting), and in particular his comments and those of other members on paragraphs 1 (e) and 8 (a) of the draft resolution in annex II of document A/CONF.62/C.1/L.30. It had a few further brief observations to make on the subject. Paragraph 1 (a) of the resolution governing preparatory investments was most satisfactory. However, his delegation objected to the definition of polymetallic nodules; since the resources likely to be exploited were not restricted to such nodules, the definition of "resources" in article 133 of the draft convention should be used in the resolution. Lastly, paragraphs 13 and 14 were fully acceptable to his delegation.

78. On the question of participation in the convention, his delegation was disappointed with the draft provisions on the participation of national liberation movements. Those movements should have full participation, ensuring, especially, that they could benefit from the common heritage and be in a position to represent the interests of their peoples on all bodies established by the convention.

79. In connection with matters dealt with by the Second Committee, he emphasized that, as a land-locked country, his country was unhappy with the provisions dealing with access to and from the sea and the delimitation of the exclusive economic zone and the continental shelf. The land-locked States had not been given a fair deal with respect to exploitation of resources; article 62 of the draft convention weakened the effect of article 69 in that it subordinated the participation of land-locked States to the national interests of the coastal

States and made it practically impossible for the former to exercise their rights. It was essential for the convention to establish a more equitable system.

80. Mr. HENAR (Suriname) said that his delegation considered the draft resolution on the Preparatory Commission (*ibid.*) and the draft resolution on preparatory investment in pioneer activities in annex II of that document acceptable, but felt that improvements could be made in them. It deplored the unrealistic attitude of States that wished to make radical changes in the draft convention.

81. With respect to participation in the convention by entities other than States, his delegation supported the compromise proposal submitted by the President of the Conference in document A/CONF.62/L.86 under which national liberation movements would be permitted to sign the final act and participate as observers in meetings of the Preparatory Commission and of the International Sea-Bed Authority.

82. His delegation also supported the proposal in the same document to permit self-governing associated States and certain international organizations to become parties to the convention. The international intergovernmental organizations in question, however, should be those to which their States members had transferred competence over certain matters governed by the convention, including competence to enter into treaties with respect to those matters.

83. His delegation fully supported the position of the Group of 77 with regard to holding meetings of the Preparatory Commission and of the Authority in Jamaica.

84. With regard to the report of the Second Committee (A/CONF.62/L.87), his delegation could support the United Kingdom proposal on abandoned or disused structures in the exclusive economic zone (C.2/Informal Meeting/66). It particularly welcomed the clause under which appropriate publicity must be given to the depth, position and dimensions of any installations or structures not entirely removed.

85. His delegation shared the view that the matter of passage of warships in the territorial sea of coastal States had not been satisfactorily settled. The rights and duties of States in the territorial sea of coastal States had to be so defined as to harmonize the interests of those States and those of maritime States. The interests of the other States individually were mainly those of flag States for the purposes of navigation, overflight and other communications. The concerns of the coastal States were mainly economic, strategic and environmental. The convention as it stood did not adequately provide for the security of the small and powerless States. A balance could be achieved by requiring prior notification to the coastal State or its prior consent to the passage of warships through its territorial sea. For those reasons his delegation fully supported the proposal made by Argentina and others and referred to in paragraph 6 of document A/CONF.62/L.87.

86. With respect to article 63 of the draft convention, his delegation could also support the earlier proposal made by Argentina and others on 14 August 1980 concerning stocks occurring within the exclusive economic zones of two or more coastal States. The procedure laid down in that proposal would provide further guarantees for those conservation measures which were of major importance to the coastal States.

87. In conclusion, he said that his delegation held the view that the convention should permit States parties to make reservations to it, as was customary in international law.

88. Mgr. CHELI (Holy See) said that material wealth should be used to unite men rather than divide them: that that should be the guiding thought behind a convention which, thus directed, would promote peace and international justice and help to combat poverty and ignorance.

89. The ambitious draft convention represented a positive step in that connection. The establishment of the Interna-

tional Sea-Bed Authority was an important legal innovation which the Holy See supported as an instrument to unite all nations in a common effort to manage resources for the benefit of all, particularly the neediest.

90. The Conference's first concern should be to establish an institution which promoted the convergence of interests. The Authority's viability would depend on the extent to which it could do that and on its internal coherence. It must be guided, in dealing with any significant practical problems that might arise in future, by principles of service to the international community. Success in that sphere would in turn strengthen those principles. As a new institution designed to administer part of the world's wealth for the benefit of all mankind, the experience of its early years would reveal the best course for it to follow as it pursued its ambitious goal. For those reasons, the new institutions which the Conference was about to establish should be designed with the greatest care and with a high sense of responsibility. Success in that undertaking would add to the standing of the United Nations in world opinion, a fact that should be borne in mind by all delegations in the current critical stage of the Conference's proceedings.

91. Mr. MURARGY (Mozambique) said that the Third United Nations Conference on the Law of the Sea offered the international community an opportunity to fulfil its responsibility under the Charter by changing the existing unjust economic order. A universal system obtained by consensus for the exploration and exploitation of the sea-bed's resources, the common heritage of mankind, would be a step in the right direction, and his delegation therefore felt deep concern that one State, the United States, had tried, by seeking radical changes, to prevent the adoption of the draft convention—a document which had been adopted by consensus after much negotiation and which reflected a wise compromise between conflicting positions. His delegation hoped that the United States would rejoin the consensus.

92. His delegation supported the position of the Group of 77 on the issues still outstanding.

93. With respect to First Committee matters, the proposals (A/CONF.62/C.1/L.30) submitted by the Chairman of that Committee and the President offered good prospects for consensus. On the matter of participation, his delegation considered that legitimate national liberation movements must be recognized as full parties to the convention. They were representatives of their peoples, whose interests they consistently defended, and were also subject to international law; accordingly, they should sign both the final act and the convention itself.

94. As for the participation of international organizations, his delegation considered that, as a matter of principle, they could not be parties to the convention unless all their members were States parties. As a compromise, it could accept the President's proposals in paragraph 16 of document A/CONF.62/L.86, but considered that in all fairness States members of those organizations which were not parties to the convention should not enjoy the rights which the Convention conferred upon members of organizations which did become parties.

95. On the matter of preparatory investment, his delegation held that the proposed protection should be transitory and that the parallel system must be maintained. The proposed arrangements should not be limited to the exploitation of polymetallic nodules, but should extend to all minerals and natural resources found in the subsoil of the area. His delegation did not support the idea of allowing the nationality of the pioneer to be changed, because some countries which were not signatories to the convention might avail themselves of that provision and enjoy the rights and privileges that the convention extended to members alone. Particular attention must be given to the limitation of production in order to defend the

economies of the land-based producers of minerals, and his delegation supported the addition to article 171 of listings of the sources of fund payments to a compensation fund.

96. With regard to article 21, which dealt with the innocent passage of warships through the territorial sea, his delegation believed that there was a need to preserve the fundamental elements of the package. The draft convention as it stood met all the concerns of the sponsors of the amendment proposed to that article and could be interpreted in such a way that the State was entitled to adopt measures to guarantee its security.

97. Mr. ABAD SANTOS (Philippines) said that the question of participation in the convention was one of the more difficult problems faced by the Conference. The report of the President on that issue (A/CONF.62/L.86) provided a framework for the resolution of the problem and the compromise proposals contained in it were, in most respects, acceptable to his delegation. It was especially gratified at the inclusion in the final clauses of article 305, providing for the participation of self-governing associated States and Territories. Several island States and Territories in the Pacific, such as Micronesia, Palau, the Cook Islands and Niue, could thereby be brought into the convention, thus giving their peoples access to the resources of the marine environment.

98. With regard to participation by international organizations, his delegation maintained that it was not sufficient for the majority of their members to be signatories to the convention before they could sign it; all of their members must be signatories. Therefore, article 2 of annex IX was not a consensus formulation. Members of an international organization which did not sign the convention and thereby assume the attendant responsibilities should not be allowed to benefit from its provisions through the participation of the organization in the convention under a mere majority requirement.

99. The report of the Chairman of the Second Committee (A/CONF.62/L.87) was fair and accurate, but his delegation regretted that the proposal, referred to in paragraph 6 of that document, submitted by the Philippines and 26 other delegations had not been accepted by some participants. That proposal stipulated that a coastal State had the power to require authorization or prior notification for the passage of warships in its territorial sea.

100. The draft convention contained provisions concerning the passage of warships through the territorial sea (arts. 29 to 32). While such passage of warships was therefore recognized, article 30 provided that: "If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately." In his delegation's view, that provision empowered a coastal State to require authorization or notification as a requisite for the passage of warships through its territorial sea. The proposal referred to in paragraph 6 of document A/CONF.62/L.87 was intended merely to clarify, make specific or improve the draft convention.

101. Closely related to the subject of passage of warships through the territorial sea was the passage of warships and vessels of special characteristics through archipelagic sea lanes. Article 53, paragraph 1, of the draft convention required the archipelagic State to designate sea lanes and air routes thereabove for the passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea. As provided in the draft convention, the passage of all types of foreign vessels through archipelagic waters was more relaxed and affected by fewer restrictions than passage of such vessels through the territorial sea.

102. At least two requirements concerning passage through the territorial sea were not paralleled in the provisions concerning passage through archipelagic waters. The first was in

article 20 of the draft convention, which required submarines and other underwater vehicles to navigate on the surface of the territorial sea and to show their flag; but article 53, paragraph 3, defined archipelagic sea lanes passage as the exercise of the rights of navigation and overflight in the normal mode. That could mean that submarines and other underwater vehicles need not surface and show their flags when passing through archipelagic waters. The second discrepancy related to the designation of sea lanes. Under article 22, paragraph 3 (a), coastal States should merely take into account the recommendations of the competent international organization in respect of the territorial sea, whereas under article 53, paragraph 9, an archipelagic State, in designating or substituting sea lanes or prescribing or substituting traffic separation schemes, should refer proposals to the competent international organization with a view to their adoption, and the organization might adopt only such sea lanes and traffic separation schemes as might be agreed upon with the archipelagic State, after which the archipelagic State might designate, prescribe or substitute them. Consequently, the régime of the territorial sea which was outside the archipelagic baselines was more restrictive in the case of passage of foreign vessels than that applicable to the passage of such vessels through archipelagic waters which were inside the archipelagic baselines.

103. Those were some of the difficulties which the Philippines, as an archipelagic State, had with Part IV of the draft convention, but which it hoped could be corrected.

104. Mr. MANNER (Finland) said that Finland had always emphasized the importance of the progressive development of international law as one of the major objectives of the United Nations. It was one of the few States which had ratified all four Geneva Conventions of 1958 and applied their rules in practice.

105. Representing one of the coastal States of the Baltic Sea, his delegation maintained that the situation prevailing within that sea area was satisfactorily regulated under existing treaty provisions and it hoped that the Conference would not result in any radical changes in those arrangements. The extension of coastal State jurisdiction beyond territorial waters would widen the existing gap between the economic advantages enjoyed by the coastal States and the limited ones enjoyed by States without direct access to the ocean. It was therefore necessary to recognize the special needs and interests of land-locked and other geographically disadvantaged States. For that reason the relationship between the extension of coastal State jurisdiction and the exploitation of deep-sea resources as part of the common heritage of mankind must be taken into account, and the new international régime for the sea-bed beyond coastal State jurisdiction must be made as effective as possible.

106. It was therefore essential to give the new Authority all necessary means and powers not only for controlling and regulating sea-bed mining activities but also for initiating new projects and promoting all related activities. His delegation would continue to support all reasonable efforts to promote those goals and principles and to bring the Conference to a successful conclusion. It had welcomed the completion of the draft convention in 1981 and was prepared to adopt the final text by consensus; there were, however, still many obstacles in the way of final adoption. It was understandable that such a comprehensive and complex text, dealing with subjects of exceptional economic and political importance, should cause difficulties for States which had to consider its adoption.

107. His delegation, for example, was not happy with some parts of the draft convention, such as those covered by certain proposals made by the group of land-locked and geographically disadvantaged States and the articles on enclosed and semi-enclosed seas, which contained little more than a recommendation to co-operate. The compromise text on delimita-

tion criteria, however important, was also a very meagre result from many years of intensive negotiations. No acceptable formula had yet been found to satisfy the just and reasonable requirements of smaller industrialized States and to enable them to be represented in the Council of the Authority. The rules on innocent passage and straits used for international navigation did not in all respects take into account the interests of the coastal States concerned.

108. Despite those shortcomings, however, the draft convention had to be regarded as a package reflecting the results of arduous negotiations and as one of the most important achievements in the development of international law. It was in many respects a compromise reached by making concessions and accepting solutions which represented a delicate balance between divergent opinions and interests, and it did not represent the views of any particular group of States. It was intended to become a basis for the future economic and social development of the international community and every effort should be made to adopt it by consensus. In order to bridge the gap between divergent positions, with particular reference to part XI, 11 like-minded delegations, including his own, had prepared some compromise proposals (WG.21/Informal Paper 21) which could serve as a basis for further negotiations. He appealed to all delegations to con-

sider them and to renew their efforts to rectify the serious situation prevailing in the Conference.

109. His delegation took note of the draft resolutions on the Preparatory Commission and on preparatory investment in annexes I and II of document A/CONF.62/C.1/L.30 and hoped that negotiations carried out on the basis of those proposals would prove successful.

110. The Chairman of the Second Committee had concluded his report (A/CONF.62/L.87) by stating that "there is a real consensus on the need to preserve the fundamental elements of the parts of the draft convention which are within the competence of the Second Committee". His delegation underlined the importance of that statement, and pointed out in that connection that the draft articles on innocent passage did not affect the well-established international practice, applied also by Finland, that coastal States had the right of innocent passage, and that the legal régimes concerning passage in the Danish straits and the strait between Aland Islands and Sweden, were regulated by long-standing international conventions of the kind referred to in article 35 (c); it was important that that provision should remain unchanged.

The meeting rose at 6.10 p.m.

163rd meeting

Wednesday, 31 March 1982, at 6.10 p.m.

President: Mr. M. O. ADIO (Nigeria)

Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973 (*continued*)

1. Mr. LARSSON (Sweden) said that, although the Conference had reached a critical stage, the considerable difficulties confronting it might yet be resolved through a final effort to reach consensus which might be attained on the basis of the proposals put forward by the group of 11. There was no doubt that the value of the convention would be seriously diminished if the principle of consensus were abandoned and if a number of States whose accession to the convention was of great importance refused to ratify it. The result would be a considerable degree of legal uncertainty and an obvious risk of anarchy in the field of deep-sea mining. It was the responsibility of all members of the world community to avoid such a situation, and he therefore appealed to all States participating in the Conference to reconcile their differing interests in order to guarantee a successful outcome.

2. Turning to issues of special interest to his Government, he said that, while the existing wording of article 161, paragraph 1, regarding the composition of the Council virtually excluded a large group of small and medium-sized industrialized countries from representation on the Council for excessive periods of time, those countries were none the less required to make considerable contributions to the financing of the Enterprise. His delegation was open to any solution which might give those countries the opportunity of reasonable access to representation on the Council. That could be done through a modest increase in the Council's membership, and he urged the participants to approach the problem with an open mind.

3. A solution was also urgently required to the problem of preparatory investment protection, and the solution proposed by the President of the Conference was a reasonable and bal-

anced compromise which ought to offer prospects of consensus.

4. On the question of delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts, an issue of particular interest to his delegation, the Conference was also indebted to the President for his efforts at the last session, which had led to a formula which seemed likely to gain general acceptance.

5. His delegation supported the United Kingdom proposal to amend article 60, paragraph 3 (C.2/Informal Meeting/66), by providing for a less strict application of the obligation to remove abandoned installations and structures in the exclusive economic zone.

6. It could accept the existing text of those parts of the convention which dealt with innocent passage through territorial seas. Sweden had long required prior notification by foreign warships and other Government-owned vessels used for non-commercial purpose in regard to their passage through the Swedish territorial sea. That requirement did not, however, in any way affect their right to innocent passage through the Swedish territorial sea, and it was therefore his understanding that the provision was compatible with the rules and principles of current international law and that the legal situation would not be changed by the entry into force of the convention.

7. His delegation was also able to accept the proposed rules regarding passage through straits, and noted in that connection the exception from the transit passage régime referred to in article 35 (e) of the draft convention. That exception, which applied to straits in which passage was already regulated in whole or in part by long-standing international conventions, was of great importance to his country in that it would be applicable to the straits between Sweden and Denmark and also between Sweden and the Aland Islands.