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135th meeting

Monday, 25 August 1980, at 3.30 p.m.

President: Mr. H. S. AMERASINGHE

General debate (*continued*)

1. Mr. VALENCIA-RODRÍGUEZ (Ecuador) repeated his country's view that the territorial sea should extend for 200 nautical miles; in view of the plurality of régimes, that solution would help maintain the desired balance in the convention. Without violating any rule of international law or infringing the principles of peaceful coexistence, Ecuador had taken a decision to that effect well before the Conference had been convened. His delegation was not advocating that all States should set the breadth of their territorial sea at 200 nautical miles, but those which could do so, in the light of geographical, geological, social, economic and other factors, should be entitled to take such action. In that connexion, in order to ensure a proper balance in the text, States should be able to express reservations or make declarations when they signed or ratified the convention or acceded to it, so as to secure the protection that they felt was essential on a vital point. Consideration might also be given to a safeguards clause in the convention itself. A solution of that kind would help his delegation to overcome the difficulties caused by the lack of provisions on archipelagos forming part of the territory of a State. In that connexion, he stressed the special situation of the Galapagos archipelago, which UNESCO had declared to be a natural heritage that must be preserved for the benefit of mankind and science. His delegation saw no valid legal reason to discriminate against archipelagos forming part of the territory of a State, whereas a special régime was being set up for archipelagic States. Identical geographical formations must be accorded identical treatment. To protect and defend the flora and fauna of the Galapagos, which were unique in the world, Ecuador was counting on the international technical co-operation which would be extended to it through the machinery set up under the convention and other relevant international instruments.

2. In that connexion, and to defend the sovereignty and security of coastal States, a group of delegations, including the delegation of Ecuador, held the view that the passage of warships in the territorial sea must be subject to prior authorization by such States.

3. Ecuadorian waters were particularly rich in tuna, a highly migratory species that had always interested the large foreign fishing enterprises and thus brought about serious international conflicts, of which Ecuador had been a victim. Since a large part of the population of Ecuador earned their living from the fishing or marketing of tuna, the system of exploitation of that species was of fundamental concern to his country. Obviously, the coastal States must co-operate with the other States whose nationals fished for those species in the region and the competent international organizations must ensure the conservation and encourage optimum utilization of those species. But his delegation found it unacceptable that those organizations should be placed above States. The understanding should therefore be reaffirmed that article 64 of the convention could apply only if the other provisions governing the system of exploring and exploiting living resources, in particular articles 61 and 62, also applied. In that way, no decision affecting highly migratory species within the 200-nautical-mile limit could be adopted without the consent of the coastal State concerned.

4. On the question of marine scientific research, Ecuador had been surprised to see that the text did not properly reflect the extent of the rights and powers of the coastal State. The essential principle should be that third States or international organizations could not carry out research within the 200-nautical-mile limit or on the continental shelf without the express prior consent of the coastal State. The ways in which that principle was applied could

be adapted to the various maritime zones established pursuant to the convention.

5. It was not possible to go beyond recourse to compulsory conciliation in the case of disputes over fisheries and the exercise of sovereign rights by coastal States in matters relating to marine scientific research. Any change in the text that would make such disputes subject to compulsory international settlement would render the convention unacceptable.

6. Ecuador had supported and continued to support the decisions of the Group of 77 on every issue being dealt with by the Conference; its support was particularly strong on matters relating to the international Area of the sea-bed beyond the limits of the national jurisdiction. The principle that the Area and its resources were the common heritage of mankind must be translated into reality, and, to that end, it was necessary to strengthen the powers of the Authority and the Enterprise through the transfer of technology to those bodies and the developing States, and through the provision of the financial resources that they needed in order to operate for the benefit of mankind and to compete on an equal footing with other State or private enterprises. The Council must be constituted in such a way as to represent the interests of all groups and to take into account the importance and growing number of developing States. There was no place for a voting system that would directly or indirectly create a disguised veto or vote weighted in favour of certain States. The decisions of the Council must be taken democratically by majority vote.

7. His delegation noted with concern that the rights of coastal States, particularly developing coastal States, had been steadily whittled away in the successive negotiating texts. In accordance with the second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2 and Corr. 2-5), the high seas began where the 200-mile zone ended, regardless of the name or meaning given to that zone in the domestic laws of States.

8. Ecuador would not endorse a convention that deprived coastal States of some of their rights.

9. Lastly, his delegation hoped that greater efforts would be made in the third revision of the text to reconcile and respect the rights and interests of all States, for that was the only way to arrive at a universally acceptable convention.

10. Mr. GUK (Democratic People's Republic of Korea) expressed the position of his delegation on Romania's informal proposal for the amendment of article 70 (C.2/Informal Meeting/51). He fully understood the particular geographical situation of Romania and other States bordering the Mediterranean or the Black Sea which had limited fishing resources. Since the Romanian proposal was intended to defend effectively the interests of geographically-disadvantaged States situated in a region or sub-region with limited fishing resources, his delegation fully supported it.

11. His delegation was gravely concerned about the recent enactment of unilateral national legislation governing the exploration and exploitation by the United States of the sea-bed area beyond the limits of national jurisdiction, legislation that was contrary to the interests of world peace and security, and to co-operation and understanding among nations. On that question his delegation shared the views expressed by the Group of 77, which opposed any unilateral legislation relating to the common heritage of mankind.

12. Mr. CARÍAS (Honduras) said that his delegation welcomed the progress made during the second part of the ninth session of the Conference on the outstanding issues. The texts resulting from the negotiations in the First Committee

(A/CONF.62/L.28/Add.1) were not entirely satisfactory to his delegation, but could be incorporated in the third revision. He supported article 140 and article 160, paragraph 2 (f), relating to activities in the Area carried out for the benefit of mankind and to the equitable sharing of benefits. He also supported the provisions concerning production policies, but considered that subparagraph (h) should be deleted from article 150. Article 151, paragraph 4, relating to a system of compensation, should be examined more thoroughly. His delegation supported the review procedure provided for in article 155 provided that the balance of concessions was maintained. Although not completely satisfactory, the system of decision-making by the Council provided for in article 162 was the result of a laudable effort at conciliation. Nevertheless, consensus could be defined more precisely. The text relating to the composition of the Council included the new category of "potential producers", which his delegation continued to support. Henceforth, consideration should accordingly be given to wording designed to ensure the genuine and effective participation of all States in the management of the restricted organ of the Authority, in accordance with the principles of equitable geographical distribution, the lowest level of development and the interest of mankind. The interest of the medium-sized industrialized countries must also be taken into account, in view of the future contribution that they would certainly make to the Authority. Honduras also supported the system of financing for the Enterprise, together with the recommendations concerning the transfer of technology, including the system provided for in annex III, article 5 (in particular in paragraph 3 (e)), and the new paragraph 7 of that article).

13. Certain aspects of the questions considered by the Second Committee, had not been properly dealt with in the negotiating text: that was the case, in particular, with the conditions under which warships should pass through the territorial sea and internal waters when those areas had been delimited in accordance with the system of straight baselines. With respect to the exclusive economic zone, the second revision provided for a juridical régime which presupposed a balance of rights, powers and freedoms and could not be changed. Honduras, which had adopted those basic principles by means of a decree-law in 1951, had elaborated on that régime in 1980 through a law on the exploitation of the natural resources of the sea, re-establishing the balance developed in the practice of States and the deliberations of the Conference.

14. The Third Committee had made commendable efforts to put the finishing touches to the texts drawn up at preceding sessions, taking account of the recommendations made by the Drafting Committee and various delegations. His delegation supported the results of those efforts as reflected in documents A/CONF.62/C.3/L.34 and Add.1 and 2. However, the text should spell out more specifically the obligation to co-operate in the publication and dissemination of information and knowledge resulting from marine scientific research, and in particular in the transfer of that information and knowledge to the developing countries. It was important to stress the provisions in articles 275 and 276 concerning national and regional marine scientific and technical research centres, to which his Government accorded high priority, since it was convinced that they represented a useful mechanism for channelling scientific and technical assistance to the developing countries.

15. With regard to the problem of the settlement of disputes he supported the suggestions made in document A/CONF.62/L.59, although several of them, in particular those in paragraph 9, had not been given sufficient consideration. In particular, further consideration should be given to the suggestion made in paragraph 9 (a) that the annexes should have the same status as the convention itself and the provisions concerning compulsory conciliation should be incorporated in the convention.

16. With respect to the final clauses (see A/CONF.62/L.60) and general provisions (see A/CONF.62/L.58), Honduras supported the results obtained and welcomed the provision stipulating that 60 ratifications would be necessary for the convention to

enter into force. On the other hand, it still had reservations concerning article 305 on the relationship between the draft convention and the Conventions of 1958, and, in particular, concerning paragraph 6 of that article. Honduras, like many other countries, supported document GP/9 and was willing to endorse, in a spirit of compromise, the President's initial proposal on the peremptory nature of the principle of the common heritage of mankind. His delegation was not convinced that the new paragraph 6, as proposed, offered the best solution in such a delicate area, and would prefer the question to be re-examined. As for the other general provisions, it explicitly supported the three articles concerning good faith and abuse of rights, peaceful uses of the seas and disclosure of information, on the understanding that the last sentence in paragraph 2 formed an integral part of the global package. Lastly, it supported the new provision concerning archaeological and historical objects.

Mr. Osman (Egypt), Vice-President, took the Chair.

17. Mr. FALCÓN BRICEÑO, (Venezuela) said he wished to suggest some changes in document A/CONF.62/WP.10/Rev.2, which raised certain difficulties for his country. First, with regard to articles 15, 74 and 83 relating to the delimitation of maritime areas, he pointed out that, when ratifying the Geneva Conventions of 1958, Venezuela had made an express reservation in respect of articles 12 and 24 (paras. 2 and 3) of the Convention on the Territorial Sea and the Contiguous Zone¹ and article 6 of the Convention on the Continental Shelf,² in conformity with its position of principle that the delimitation of maritime areas between States with opposite or adjacent coasts should be effected by agreement between the parties in accordance with equitable principles, a theory which had gained ground in international law. His delegation was therefore opposed to the formula contained in article 15 for the delimitation of the territorial sea. In addition to the objections expressed by Venezuela and its sponsors of document NG7/10/Rev.2 with regard to articles 74 and 83, which were derived from the proposals of the chairman of negotiating group 7 (A/CONF.62/L.47),³ his delegation wished to point out that the new wording of paragraph 1 in those draft articles was ambiguous and should be made more precise in order to avoid disputes. His delegation was dissatisfied in particular with the reference in the first sentence of article 74, paragraph 1, to "international law" and with the expression in the second sentence "all circumstances prevailing in the area concerned", which could be interpreted in several ways and appeared to limit the factors which should be taken into account to purely geographical circumstances. The expression was without precedent in legal practice and theory and had not been examined by negotiating group 7. His delegation nevertheless hoped that the continuing consultations would result in a solution satisfactory to all the States concerned. However that might be, he continued to be of the opinion that agreement between the States concerned offered the best means of reaching equitable solutions in that field; experience had shown that judicial decisions or rulings of courts of arbitration often gave rise to delicate situations liable to jeopardize peace. With regard to disputes which might occur in that field, article 298, paragraph 1 (a) (ii), should be interpreted as meaning that, if negotiations between the parties conducted on the basis of the report of the Conciliation Commission did not result in an agreement, the States were in no way bound to consent to other settlement procedures. It should be clearly understood that the procedure established in article 298, paragraph 1 (a), was not applicable to disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, to disputes involving historic bays or titles if they had arisen prior to the entry into force of the convention or to disputes that necessarily involved the consideration of another unsettled dispute concerning sovereignty or other rights over con-

¹ United Nations, *Treaty Series*, vol. 516, No. 7477, p. 207.

² *Ibid.*, vol. 499, No. 7302, p. 313.

³ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIII (United Nations publication, Sales No. E.81.V.5).

tinental or insular land territory. To that end, his delegation proposed that such disputes should be mentioned in article 296. It attached the greatest importance to the question of delimitation and considered that a solution which did not take sufficient account of the vital interests involved would make it difficult, if not impossible, for a number of States to ratify the convention.

18. Turning to the régime of islands, he said that Venezuela had serious objections to the provision in article 121, paragraph 3, which established an exception to the general rule set out in paragraph 2 of that article. The retention of such a provision would institute discrimination between the continental and insular parts of the territory of a State. Furthermore, that exception created serious difficulties of interpretation. The term "rocks" was in neither the legal nor the scientific vocabulary and might refer to any island formation. Moreover, the two criteria which would determine the exceptional treatment were ambiguous and very relative. For a variety of reasons, mostly economic, a number of islands which were formerly uninhabited were now inhabited and vice versa. If the provision was to be maintained in the final text, his delegation would interpret it as meaning that the capacity of an island to sustain human habitation referred not only to the abstract possibility of habitation, but also to the practical situation, since the continental or insular territory of a State could be developed to suit the interests of the State concerned. Similarly, Venezuela considered that the expression "economic life of their own" should be interpreted as covering not complete self-sufficiency, but the existence of national resources which could be exploited economically or the possibility of other uses. In those circumstances, the complete deletion of article 121, paragraph 3, from the third revision would, in his delegation's opinion, be the only way to solve such problems and avoid disputes.

19. In conclusion, his delegation continued to hold the view that reservations should be permitted in all areas which concerned the vital interests of the States parties.

20. Mr. LARES (Finland) welcomed the compromise which had been found for the problem of decision-making by the Council. However, in the text to be adopted for determining the composition of the Council account would have to be taken of the interests and policies of small and medium-sized industrialized countries. Similarly, his delegation had always stressed the need to recognize the needs and interests of the large group of landlocked and geographically disadvantaged States, to which Finland belonged. The preservation of freedom of navigation in the future convention was an essential part of the over-all package deal. The future convention would contain new legal régimes of transit passage in straits and of archipelagic sea lanes passage. In that connexion, he noted that, in accordance with article 35 (c), the legal régimes concerning passage in the Danish Straits and in the strait between the Aland Islands and Sweden, established by long-standing international conventions, would remain unchanged.

21. With regard to the régime of innocent passage in the territorial sea, the convention would be more specific than the 1958 Convention. In accordance with well-established international practice, applied also by the Finnish Government, coastal States had the right to require prior notification of warships and other government ships operated for non-commercial purposes wishing to exercise their right of innocent passage, a requirement which in no way affected the right in question.

22. His delegation had taken a close interest in the provisions concerning the protection and preservation of the marine environment. As a party to the first regional agreement of that type—the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area—Finland noted with satisfaction the provisions of the second revision of the negotiating text relating to all types and sources of marine pollution. However, those provisions would not be really effective until further national and international regulations had been adopted and his delegation attached particular importance to article 235, which States should start implementing immediately.

23. Turning to the question of the provisions on the settlement

of disputes relating to the interpretation or application of the convention, he regretted the provision for extensive exceptions to the principle of compulsory settlement procedures. He would have preferred the establishment of a system of compulsory settlement applicable to the different types of disputes and to the different sea areas, including the economic zone. Nevertheless, he recognized the difficulties involved in such an approach and was prepared to accept the results of the negotiations.

24. With regard to the work of the Drafting Committee and its various language groups, it was imperative that any changes proposed should be brought before the Conference for adoption before the third revision could be considered as a basic text.

25. Although most of the problems had now been solved, a few still remained and the Conference would have to deal with them at its next session; they included the question of participation in the Convention and the establishment of a preparatory commission and its composition and powers. His delegation was confident that those questions would be settled at the latest by the beginning of the next session, at which the Conference's main task would be to examine the third revision of the negotiating text in the light of the comments of the Drafting Committee.

26. In conclusion, he expressed the view that the guidelines which the Conference had adopted, namely, to take into account the interests of all and to adopt decisions by consensus, and which had required considerable patience on the part of all delegations offered the best guarantee of a lasting and viable result.

27. Mr. KOZYREV (Union of Soviet Socialist Republics) said that his delegation considered the results of the negotiations at the ninth session to be positive, particularly the compromise solutions to the problems which had exercised the First Committee (see A/CONF.62/C.1/L.28 and Add.1). A new formula, combining the consensus principle and a three-fourths or two-thirds majority according to the category of question discussed, had been adopted for decision-making. His delegation was not entirely satisfied with that situation but thought that the formula agreed on was well-balanced and that the introduction of any change might create a deadlock in the Conference. Consequently, having taken note of the position of the Group of 77 and of other groups of States, his delegation was prepared to support it. The formula was directly linked with the principles which had been agreed upon for determining the composition of the Council and were set forth in article 161, paragraph 1. His delegation would resolutely oppose any attempt to revise these compromise provisions relating to the composition of the Council and to its decision-making mechanism. Any attempt to modify the composition of the Council would in fact undermine the agreements which the Conference had reached on the issues dealt with by the First Committee and would consequently delay its work. To reopen the discussion on the composition of the Council would be tantamount to calling in question the entire package deal on matters assigned to the First Committee.

28. The other proposals made by the Chairman and other members of the First Committee were also part of a compromise solution, but his delegation did not consider that all those provisions, particularly the anti-monopoly clause, were satisfactory. Nevertheless, since the Group of 77 and other groups of States had welcomed that over-all solution, his delegation was prepared to endorse it if the package deal was not destroyed by the reopening of negotiations on the composition of the Council.

29. Turning to the problems entrusted to the Second Committee, he observed that the solutions it had reached (see A/CONF.62/L.51) were the result of concessions by many States. The Soviet Union had gained practically nothing from the establishment of 200-mile economic zones. Nevertheless, like many other delegations, his delegation was in no position to reopen discussions on those questions, which had already been the subject of long negotiations and had been settled on a compromise basis. It took note of the drafting amendments approved by the Second Committee and was prepared to agree to the inclusion in the third revision of all the texts drawn up by the Second Committee. The formula proposed by the chairman of negotiating

group 7 on delimitation criteria (see A/CONF.62/L.47) had not yet been adopted, but it appeared to accommodate to a certain extent the positions of all interested groups of countries and stood the best chance of adoption by consensus.

30. His delegation noted with satisfaction the positive results achieved by the Third Committee and thought that the drafting changes to Parts XII, XIII and XIV might be incorporated in the third revision. The Soviet Union was not completely satisfied with all those provisions, but since the conference was reaching the final stage of its work and Parts XII, XIII and XIV were the outcome of difficult and lengthy negotiations, it agreed not to propose any changes. Once again, those provisions were an integral part of the package deal.

31. As a result of negotiations at informal plenary meetings, draft general provisions and draft final clauses of the convention had been worked out. His delegation did not support all the components of the text agreed on but if it was acceptable to the other delegations, his delegation would, in the interests of consensus, not object to it. In so doing, his delegation did not, of course, relinquish its positions of principle.

32. A great step forward had clearly been taken during the ninth session of the Conference. That progress was due primarily to the fact that the Group of 77 and the socialist countries had again succeeded in finding a joint approach on questions of major importance at that stage of the Conference. The most important element of that approach, which was supported by other groups of States, was that all States must recognize the fundamental principle that discrimination against any socio-economic system or any group of States was inadmissible.

33. It was a matter of regret that the Conference had been unable to adopt the convention at its current session, but decisive progress had been made in that direction. The third revision would become, without any formal decision of the Conference, the basic text of a convention which would contribute to the strengthening of peace, security, co-operation and friendly relations among all nations.

34. Mr. EVENSEN (Norway) welcomed the fact that the negotiations on Part XI had been successful. The corresponding proposals and revisions submitted by the co-ordinators of the working group of 21 constituted a balanced package which should make it possible to reach an over-all agreement acceptable to all. With regard to the possible participation of the small and medium-sized industrialized countries in the Council, care must be taken to avoid calling in question the proposals concerning the decision-making process and the voting procedures of the Council in particular.

35. As set out in the second revision of the negotiating text, articles 74 and 83 relating to the delimitation of the exclusive economic zone between States with opposite or adjacent coasts should improve the prospects for consensus on that difficult issue and it did not seem necessary to amend them. The proposals relating to the final clauses, submitted in documents FC/21/Rev.1 and Add.1, should be included in the third revision of the negotiating text, even if some points might require further consideration or adjustment.

36. However, some issues were still outstanding, particularly those connected with the clause on the participation of the European Economic Community and perhaps of other integrated international organizations. The problems relating to the composition and mandate of the preparatory commission must also be solved urgently in view of the fact that the Conference was drawing to a close and that certain industrialized countries were in the course of enacting unilateral legislation. Such issues should perhaps be considered before the next session of the Conference in order to pave the way for their final settlement.

37. The Drafting Committee had also been left with a heavy burden of work since it had to make the results of its work available to all members before the final session of the Conference. It would therefore have to make considerable efforts, in conjunction with the delegations concerned, to prepare a draft text which could be signed the following summer in Caracas.

38. Mr. GOERNER (German Democratic Republic) welcomed the fact that the negotiations had been successful and that the proposed revisions improved the prospects of consensus. The proposals of the co-ordinators of the working group of 21 constituted a balanced package on which discussion must not be reopened. The German Democratic Republic had always held the view that, for the Council, decision-making mechanisms must be established in such a way as to exclude any discrimination against a particular socio-economic system or group of countries. It therefore supported article 161 of the informed composite negotiating text which provided that substantive decisions should be taken by a three-fourths majority, which implied the co-operation of all groups represented on the Council. His delegation had doubts concerning the division of questions into three categories with different voting procedures, as proposed by the working group of 21. It could, nevertheless, agree to that solution since provision had been made for the adoption of decisions by consensus on the most important questions and by a three-fourths majority on other questions of great importance. In fact, in that way, the legitimate rights and interests of all the socio-economic systems represented on the Council would be taken into consideration.

39. The anti-monopoly clause contained in annex III, articles 6 and 7, could have been improved. In particular, it might have contained more specific provisions relating to activities in the reserved areas. A further improvement of the text in favour of the consumers of raw materials would also be justified in respect of the resource policy of the Authority. But by and large the recommendations of the working group of 21 were judicious and should be included in the third revision of the text.

40. The Conference had also made great progress in the negotiations on the final clauses, which, by contributing to the preservation of the integrity and unity of the convention as a whole, would ensure the universal application of a uniform legal régime, the stability of the essential provisions of the convention and, at the same time, their adjustment in the light of future technological developments. The proposals submitted in documents FC/21/Rev.1 and Add.1 should therefore be included in the third revision. However, it would be desirable to stipulate that the entry into force of amendments not exclusively concerning activities on the sea-bed beyond the limits of national jurisdiction, as envisaged in article 309, paragraph 1, would require the consent of three quarters of the States parties to the convention. It seemed justifiable that amendments to a convention which would have an impact on the vital rights and interests of all States should be ratified by a very large majority of the States parties. With regard to the proposals on the general provisions submitted in document A/CONF.62/L.58, his delegation had no objection to their inclusion in the third revision, although, in its opinion, some of them were neither useful nor necessary.

41. It had been rightly stressed that for the success of the Conference it was essential not to reopen questions which had already been solved. The German Democratic Republic fully shared that view and therefore supported all measures which would guarantee that the compromise formulas devised after years of negotiations would not be touched.

42. At the end of the ninth session, agreement had been reached on all the essential provisions of the new convention. Still to be completed were the remaining final clauses, including provisions on the participation of national liberation movements in the convention and the regulations governing the preparatory commission of the international sea-bed Authority.

43. His delegation would spare no efforts, in co-operation with the other participants, to ensure that a new convention on the law of the sea regulating the utilization of the resources of the oceans and the preservation of the marine environment was signed in 1981, thus contributing to the consolidation of détente and world peace.

44. Mr. MAURICE (Madagascar) considered that the present text in no way constituted negotiated results but should be regarded as a sound basis for future negotiations. The view of his

delegation remained completely in accord with those expressed by the Organization of African Unity at Nairobi and Freetown. First, with regard to the powers and functions of the Assembly and the Council, there should be two organs not of equal status but each having clearly defined structural powers, the Council being the executive organ and the Assembly the supreme organ. Article 306, paragraph 3, relating to the procedure for amending the convention, was therefore unacceptable since it put the two organs on the same footing, both being called upon to "approve" proposed amendments. The voting procedure in the Council proposed in article 160, paragraph 2 (f), and article 162, paragraph 2 (n), was also unsatisfactory. In his delegation's view, it was a matter not of enumerating questions which required approval by a particular majority, but rather of demonstrating the political will to reach a decision, and not to block efforts at conciliation. In addition, his delegation could not support the provisional application of the rules and regulations adopted by the Council since that was likely to nullify the supremacy of the constitutional powers of the Assembly.

45. With regard to the review conference, his delegation, in conformity with the position of the Group of 77, considered that the international observance of a moratorium, both during the negotiations and during the review conference, was a token of the good faith of the parties and a guarantee to mankind against the monopolization of its common heritage. Although the financing of the Enterprise had not been given undue attention by the Conference, it must be remembered that acceptance of the so-called parallel system of exploitation was linked to the establishment of an Enterprise that was viable and operational at the technical and financial levels.

46. As to the negotiated package deal on the outstanding issues, particularly those referred to by the First Committee, his delegation thought that the present texts did not constitute the final outcome of negotiations but provided only a basis for future negotiations. One could not disregard the legitimate interests of coastal States at the time of exploitation of the exclusive economic zone or the effective transfer of technology, issues which the Organization of African Unity had already stressed. The problem of the delimitation of the exclusive economic zone remained to be solved and at the current stage of work the unacceptable formula in articles 74 and 83 of the second revision of the negotiating text was being used as a basis for discussion. Efforts in that area must therefore be continued.

47. His delegation welcomed, on the other hand, the adoption by consensus of the text relating to the peaceful uses of the seas, which constituted a praiseworthy effort towards the establishment of peace. It would also be desirable to establish the principle of prior authorization of the innocent passage of warships in the territorial sea and perhaps in the exclusive economic zone. The Conference should therefore endeavour to find a truly satisfactory solution to those ostensibly secondary problems. Improvements had been made to the initial text with regard to the question of the settlement of disputes, but those texts would not be final until work had been concluded.

Mr. Perišić (Yugoslavia), Vice-President, took the Chair.

48. Mr. SHEN Weiliang (China) expressed the hope that after it had been revised, the informal composite negotiating text would become the basic text of a draft convention on the law of the sea acceptable to all States. However, certain questions of substance had yet to be solved. First, with regard to the voting procedures in the Council, one should not lose sight of the fact that the Council was the executive organ of the authority, called upon to take important decisions in the interests of mankind as a whole, and that its voting procedures must therefore be democratic and practicable. His delegation had originally proposed that decisions on questions of substance should be taken by a two-thirds majority, but owing to the divergent views of delegations, the issue had remained unsolved. The co-ordinators of the working group of 21 now proposed a new version of article 161, paragraph 7, in which questions of substance were divided into three categories, with different voting procedures for each. Al-

though his delegation was not satisfied with that formula, it would not object if the formula was acceptable to most countries. However, it wished to point out that under the proposal there were 19 questions in subparagraph (c), which were to be decided by a three-fourths majority, but only 8 questions in subparagraph (b), to be decided by a two-thirds majority. In its view, the number of questions covered by subparagraph (c) should be reduced and the number of questions covered by subparagraph (b) should be increased. The question which of those two subparagraphs a particular question came under should also be decided by a two-thirds majority. Questions not clearly listed in the article or not specified in the relevant rules and regulations should be treated as coming under subparagraph (b).

49. With regard to innocent passage in the territorial sea, his delegation had already pointed out that the provisions of the second revision of the text did not make it clear that the régime applied only to non-military vessels. To safeguard the sovereignty and security of the coastal State, the delegations of his own and a number of other countries had submitted a proposal (C.2/ Informal Meeting/58) to the effect that a provision should be inserted in article 21 of the text stipulating that the coastal State had the right, in accordance with its laws and regulations, to require prior authorization or notification of the passage of foreign military vessels in its territorial sea. That proposal, which had won support of many countries, was in conformity with the generally recognized principles of international law according to which only non-military foreign vessels enjoyed the right of innocent passage in the territorial sea. In the case of military vessels, the coastal State naturally had the right to take the necessary steps to regulate such passage. The legislation of several countries, including China, prohibited the unauthorized entry into the territorial sea or air space by military vessels or foreign aircraft. The Conference should therefore take account of those provisions and make the necessary changes in the text.

50. The definition of the continental shelf contained in article 76 was based on the principle of natural prolongation, which accorded with the scientific concept of the geographical and geological definition of the continental shelf. It therefore fixed the outer limit of the continental shelf at 350 nautical miles from the baselines from which the breadth of the territorial sea was measured, or at 100 nautical miles from the 2,500-metre isobath. That provision was reasonable, as was that which fixed the outer edge of the continental margin of a State at 200 nautical miles, provided that that was without prejudice to the application of the principle of natural prolongation. However, since the geographical and geological features of the continental margin varied greatly, some degree of flexibility should be introduced into the definition. Accordingly, his delegation had proposed an amendment to that effect and hoped that it would be taken into consideration.

51. The question of the delimitation of the exclusive economic zone and of the continental shelf between States with opposite or adjacent coasts should be determined through negotiations between the parties concerned, in accordance with the principle of equity and taking into account all the relevant factors. The median or equidistance line was a method which could be adopted only when it was in conformity with the principle of equity generally recognized in international law and confirmed in many international documents and in international jurisprudence. In that sense, paragraph 1 of the existing articles 74 and 83 constituted a step backward in relation to the preceding version of the text. It would therefore be desirable to improve those provisions, which had not been endorsed by the majority of countries.

52. Articles 303 and 304 on reservations and exceptions, as proposed in documents FC/21/Rev.1 and Add.1, provided that no reservations or exceptions might be made to the convention unless expressly permitted by other articles, while article 304 on declarations and statements provided that a State party, at the time of signing, ratifying or acceding to the convention, might make declarations on the understanding that they did not possess the legal effect of reservations. Since there might be very few reservations expressly permitted by other articles and since what

were called exceptions were not reservations, the foregoing provisions were tantamount to preventing States parties from expressing reservations which would not be incompatible with the principles of the convention in respect of articles affecting their essential rights and vital interests. The provisions were therefore inappropriate. His delegation had repeatedly stressed that, as the new convention covered a wide range of complicated problems, it was impossible to take account of all the interests of the various States, even if the convention was adopted by consensus. In order that the convention might be accepted by as many countries as possible and enter into force at an early date, it was entirely proper to permit limited reservations while maintaining the essential integrity of the convention. Article 303, which was based only on an hypothesis, and was provisional, must be further discussed.

53. His delegation hoped that its comments would be taken into consideration in the revision of the text. It did not object in principle to the revised articles, which were the outcome of consultations, being included in the third revision of the text as a basis for further consultations. Like other delegations, it would do its utmost, in a spirit of co-operation, to bring the work of the Conference to a successful conclusion.

54. Mr. DREHER (Federal Republic of Germany) said that during the 125th meeting,³ his delegation had already expressed its position as that of an industrialized State with various marine interests. With respect to Part XI of the text, the Federal Republic of Germany still felt that the private-side financing of the Enterprise was excessive. Furthermore, the general concept reflected in articles 150 and 151 on resource policy was too much oriented towards safeguarding the interests of land-based producers. Article 150, subparagraph (d), should therefore be amended if the newly-introduced market access clause was to be acceptable. Although his delegation was opposed to any form of production limitation and considered that a sufficiently high "floor" should at least be established so as not to discourage investors, it appreciated that some changes, in particular those made in article 150, subparagraph (h), and article 151, paragraph 1, took account of its views. Article 155 on the review system created difficulties vis-à-vis the Constitution of the Federal Republic of Germany. His country's Parliament reserved the right to endorse future substantive amendments to the convention, and the review conference should not jeopardize access to deep-sea mining by States and their nationals.

55. With respect to the voting procedure in the Council, major progress had been achieved, but the principle set forth in article 162, paragraph 2 (j), was still questionable, since everything would depend on the judgement of the experts in the legal and technical commission. It was most important, therefore, that safeguards should be incorporated in the text and in the rules and regulations so as to ensure impartiality in the Commission's proceedings.

56. With regard to the transfer of technology, there was some concern that the provisions relating to third States might lead to endless legal and practical difficulties. That was one of the main disadvantages of Part XI. His delegation maintained its opinion that the obligation to transfer technology to States went beyond the idea of a parallel system and could not be embodied in the convention. It could not therefore support annex III, article 5, paragraph 3 (e), even though its proposal to define the notion of "fair and reasonable terms and conditions" had been taken up.

57. On the question of annex III, article 9, his delegation again requested that developing and developed countries should be allowed to undertake joint ventures in the reserved area. That formula would enable the developing countries to participate at an early stage in the exploitation of deep-sea resources. His delegation had made detailed proposals for reducing the financial contributions proposed in annex III, article 13. It had proposed an alternative formula aimed at reducing by 50 per cent all payments to the Authority by contractors starting commercial seabed production before the year 2000. That "discount" would be fol-

lowed by a 25 per cent reduction for the remaining years of the contract.

58. With respect to Second Committee matters, innocent passage in the territorial sea by all ships was a fundamental right of the community of nations. His delegation therefore maintained its proposal that article 19, paragraph 2 (f), should be improved. Furthermore, the right to extend the territorial sea up to 12 nautical miles should not be exercised to the detriment of other States. A prerequisite for recognition of the coastal State's right to extend the territorial sea was the régime of transit passage through straits used for international navigation. Article 38 should be understood to mean that the right of transit passage was limited only where there was an equally convenient route from the standpoint of navigation and hydrographical characteristics, which included the economic aspects of shipping.

59. In the exclusive economic zone, coastal States would be granted resource-related rights and jurisdiction. All States would continue to enjoy the high-seas right of navigation and overflight, and all other lawful uses of the sea not under such jurisdiction. Those rights would be exercised for peaceful purposes, i.e. in accordance with the Charter of the United Nations. The delicate balance achieved in articles 56 and 58 included a reference to articles 88 to 115, which applied to the exclusive economic zone in so far as they were not incompatible with Part V. Nothing in that part was incompatible with article 89, which invalidated any claim of sovereignty over the high seas.

60. Freedom of transit for land-locked States through the territory of transit States should not infringe the sovereignty of the latter. His delegation therefore considered that, in accordance with article 125, paragraph 3, the rights and facilities provided for in Part X in no way infringed the sovereignty and legitimate interests of transit States. That should be stated clearly. The transit procedures were still to be agreed, in each case, between the transit State and the land-locked State. In the absence of such agreements, the transit of persons and goods through the territory of the Federal Republic of Germany was regulated only by national law, in particular with regard to means of transport.

61. With regard to Third Committee matters, his delegation regretted that the restrictive provisions of Part XIII ran the risk of hampering the development of marine scientific research. Article 246, paragraph 6, which limited the coastal State's discretionary power over the continental shelf beyond 200 miles to areas designated in accordance with the provisions of paragraph 6, was a minor improvement. It was in the general interest to promote marine scientific research and that should be taken into account in the interpretation and application of the text. Under the convention, the future of marine science would be assured only by co-operation and efforts by all States to promote marine scientific research.

62. The final clauses contained in documents FC/21/Rev.1 and Add.1 were on the whole acceptable, provided that the provisions of the convention not adopted by consensus remained open to reservations and that the rules, regulations and procedures drawn up by the Preparatory Commission applied provisionally. It was essential that the European Economic Community should become a party to the convention. Some further improvements still appeared to be desirable in respect of the *ad hoc* chambers for the settlement of disputes.

63. In conclusion, his delegation wished to submit the candidature of the city of Hamburg as the seat of the Law of the Sea Tribunal.

64. Mr. AL-WITRI (Iraq) said that the work of the present session had produced a text which, in addition to setting up a very complicated voting system, weakened the role of the Assembly and strengthened that of the Council. The new role of the Council would hamper decisions on such questions as the sharing of benefits derived from the Area and the resources of the continental shelf. The work of the Authority would be paralysed by the fact that decision-making powers would be limited to a minority of Council members. The consensus formula assumed unanimity and the exercise of the right of veto by each member. Iraq joined

the developing countries in opposing that formula, which had been one of the reasons for the failure of the League of Nations.

65. Turning to article 76, he said that the Arab countries had always opposed extending the continental shelf beyond 200 nautical miles. However, in accordance with their flexible approach, they were quite prepared to continue negotiations on the payments made to the Authority. In that connexion, the group of Arab States considered that article 82, paragraph 4, should mention, in addition to the least developed and land-locked States, the people who had not yet attained full independence, so that they too could share the proceeds of the exploitation of the continental shelf beyond 200 nautical miles.

66. On behalf of the group of Arab States, he requested that negotiations should be continued within the Second Committee. Turning to article 300, he said that the liberation movements recognized by the United Nations and the regional organizations, particularly the Palestine Liberation Organization, which was already attending all the sessions of the Conference, should also be allowed to accede to the convention. The cornerstone of the future convention was the principle that the sea-bed's resources were the common heritage of mankind, and therefore also of the peoples who had not yet attained independence: the text of the convention should therefore reflect that concept.

67. As the representative of a geographically-disadvantaged country he was of the view that the text did not take sufficient account of the right of land-locked and geographically-disadvantaged countries to participate in the exploitation of living resources. Furthermore, for the sake of uniformity, the expression "geographically-disadvantaged States" should be used in all relevant articles.

68. In his view articles 83 and 74 on the delimitation of the continental shelf and the exclusive economic zone as contained in the second revision of the negotiating text were incomplete. He supported the Irish proposal that they should be drafted in a more equitable manner.

69. Turning to the question of enclosed or semi-enclosed seas, his delegation considered that article 123 should be stricter and should also take into account freedom of passage in all sea lanes leading to straits. It rejected all unilateral legislation on that point and considered that the adoption of maritime legislation necessitated regional and international co-ordination.

70. Mr. LEUNG (Mauritius) said that his delegation had very strong reservations about the changes in the report of the coordinators of the working group of 21. It would like to see the principle of a moratorium reintroduced into the text of article 155 concerning the review conference. As to the proposed voting structure for the Council, it defied logical analysis and would render the system unworkable. His delegation opposed any mechanism remotely connected with the veto, weighted voting or chamber voting.

71. The position of the Group of 77 on that crucial matter had been seriously damaged without any corresponding gains. Consensus, whatever meaning was given to the word, implied a veto; he therefore hoped that the matter would be reconsidered.

72. On the transfer of technology, which was the subject of annex III, article 5, his delegation felt it was unfortunate that processing technology had been omitted from the definition of technology. It hoped that the collegium would remedy that omission in the new text it was to prepare, in accordance with the intention expressed by Mr. Njenga.

73. Turning to the problem of the relationship between the Enterprise and the Authority, he thought that the Enterprise should be endowed with sufficient autonomy to enable it to plan its operations with the necessary degree of flexibility, failing which its viability and the very existence of the parallel system might be jeopardized. As the amendments and additions made to article 5, paragraph 5, and article 7, paragraph 3, of annex IV were not desirable in that they were likely to hamper the operations of the Enterprise, he felt that they should be rejected.

74. His delegation welcomed the fact that article 151 now pro-

vided for a system of compensation or other forms of assistance in economic adjustment, including co-operation with specialized agencies and other international organizations, to help the developing land-based producer countries which suffered adverse effects as a result of sea-bed mining. However, his country could not support any system which would effectively impose a first charge on the revenues of the Authority. All countries should be able to participate, through the Authority, in the activities in the Area and the benefits accruing therefrom. The Authority must ensure that those benefits were fairly distributed among all States, since the benefits represented the common heritage of mankind. In the opinion of his delegation, it should be made clear that potential producers were not entitled to compensation under the system which was being devised. The compensation mechanisms must respond to existing situations.

75. On the question of marine scientific research, which was vital for developing coastal States, his delegation noted with satisfaction the resolution concerning a comprehensive plan to enhance the developing countries' capabilities in that area which had been adopted by the Intergovernmental Oceanographic Commission.

76. There was no doubt that the treaty which the Conference was endeavouring to produce would contain elements which would be intensely disliked by some States or groups of States. However, if the overall package was fair to all and harmed no one irreparably, then everyone could indeed work towards the attainment of the desired objective.

77. As far as the outstanding issues were concerned, particularly the questions of participation, the protection of investments over the interim period and the settlement of disputes, he was confident that they would be resolved to the satisfaction of everyone during the next round of negotiations.

78. Mr. COSTA (Sao Tome and Principe) said that the Conference was extremely important for his country as it formed part of the struggle to establish a new international economic order, which was to crystallize the legitimate aspirations of all peoples and mankind in the form of rules of conduct. In that connexion, his delegation protested against the recent enactment by the United States of national legislation on the commercial exploitation of the sea-bed. Such legislation was completely contrary to the principle of good faith which must govern the work of the Conference and prejudiced the chances of the convention being approved by consensus. The interests of a group of companies should not be allowed to override those of mankind as a whole, and his delegation unconditionally supported the position of the Group of 77 on that matter.

79. On the problem of delimitation, it was not clear who would be responsible for rendering an equitable decision in the event of a dispute; the attempt to find a definition of equity common to all countries might be an impossible task. His delegation therefore favoured the median or equidistance line as the criterion for the delimitation of the exclusive economic zone. A subjective principle should in no circumstances become a rule of international law. Articles 74 and 83 in the second revision of the negotiating text, in which the phrase "in conformity with international law" had been inserted, appeared to offer better prospects for a consensus.

80. Its exclusive economic zone was of vital importance to Sao Tome and Principe, and he regretted that the amendment to article 21 relating to the prior authorization of the coastal State for the innocent passage of warships in its territorial sea should still not have been reflected in the negotiating text.

81. In the opinion of his delegation, the report of the coordinators of the working group of 21 did not go far towards meeting the developing countries' aspirations. The moratorium clause had not been inserted in article 155, as the group of African States had wished; in its present form the transfer of technology offered the Enterprise no guarantee of effectiveness; the financing system of the Enterprise would be mainly of benefit to the industrialized countries, since the text did not guarantee its operational nature; and consensus, which was defined in article

- 161, paragraph 7 (e), as the absence of any formal objection, represented a form of veto.
82. Since the economic future of his country largely depended on the utilization of the resources of the oceans surrounding it, his delegation was very much concerned about the divergence between the industrialized and developing countries and hoped that urgent measures would be taken to strengthen the developing countries' scientific capacity and training of the expert personnel on which, in the final analysis, depended the implementation of the convention and its contribution towards the establishment of a new international economic order.
83. Mr. DIOP (Senegal) said he was pleased that the Conference seemed finally to be finding its way after six years of intensive and laborious negotiations on questions of substance. His delegation appreciated the positive results achieved concerning the territorial sea and exclusive economic zone, results which had superseded the 1958 Geneva Conventions and had since become part of State practice.
84. Concerning the negotiations on the delimitation of the maritime boundaries between States with opposite or adjacent coasts, he observed with regret that an acceptable solution had not been reached. Any delimitation must be agreed upon, must be carried out in accordance with the equitable principles and must take account of the relevant circumstances. In his opinion, the second revision of the negotiating text did not satisfy those conditions and its provisions relating to delimitation should in no circumstances be included in the third revision. On the other hand, he hoped that a solution would be found to the question of revenue-sharing, in order to complement the results already achieved on the definition of the continental shelf. He was also optimistic about the work of the Third Committee.
85. At their meeting in Freetown in June, the African heads of State had, in particular, affirmed the need to exclude any decision-making procedure based on a system of weighted or chamber voting or on a veto, and the importance which they attached to the complete transfer of technology without any time-restriction (see A/CONF.62/104). His delegation hoped that the Conference would bear in mind the legitimate concerns of a continent which, more than any other, needed technological input.
86. In that connexion, he was pleased that the difficult negotiations on articles 161 and 162 had been concluded thanks to the political will of all parties. In order to complete that work, efforts should now be made to define the concept of a potential producer State, in order to avoid leaving opportunities for abuse. In addition, it would be fair and equitable to consider the request by the small and medium-sized industrialized countries of western Europe to participate in the Council.
87. He reminded the Conference of the importance attached by Senegal, and the other African countries, to the provisions of annex III, article 5, and expressed the hope that the question of the definition of technology would be settled for good before the convention was adopted.
88. On the question of the review conference, which was dealt with in article 155, he considered that those provisions formed a good basis for negotiation. However, the provisional nature of the system of exploitation was one of the three conditions of acceptance of the parallel system, and consequently the moratorium, which provided the only means of ensuring the early success of the work of the review conference, should be restored by some means or other.
89. With regard to article 150 concerning policies relating to activities in the Area, Senegal was in favour of any solution which took into account the legitimate interests of developing countries that were land-based producers. In that connexion, it would be advisable to find, with the parties concerned, an acceptable compromise on questions of compensation and market access, which remained vital for those countries, without losing sight of the no less legitimate interests of the developing countries which were neither land-based producers nor sea-bed miners.
90. As to the outstanding issues, his delegation hoped that the spirit of compromise which had prevailed throughout the work of the current session would continue to prevail when those issues were considered at the following session.
91. It also sincerely hoped that the Drafting Committee would be able to complete successfully the task which it was so competently undertaking.
92. Mr. DE LACHARRIÈRE (France) said that at the session which was drawing to a close considerable progress had been made towards the fulfilment of the three tasks which constituted the overall mandate entrusted to the Conference.
93. The Conference's first task, which concerned the definition of a new law of the sea, consisted in confirming the results already achieved, that is to say, the general outline of the new law, as defined at previous sessions and already largely incorporated into positive law, and in supplementing them by similar agreement on certain relatively secondary points on which the Conference was still divided. In his opinion, the Geneva session had been more successful in preserving the achievements of the previous sessions with regard to everything that constituted the law of the sea, with the exception of the exploitation of the international area of the sea-bed, than in expanding them.
94. With respect to the second task of the Conference, namely, the problems involved in the exploitation of the resources of the international area, he thought that the Geneva session would occupy a prominent place in the studies which would be made by commentators on the international law of the sea, or even on international law in general, concerning the evolution of the institutions of the "common heritage of mankind". The breakthrough had occurred when the Conference had realized that the industrialized countries would not compromise, in respect of the decision-taking machinery within the Council, on the principle of an adequate safeguard for their interests. In their opinion, it had been a question of obtaining a safeguard rather than a privilege. The idea of a safeguard without privilege had been reflected from a technical standpoint in the procedure for the adoption by consensus of the most important or most sensitive decisions. In that connexion, his delegation was surprised that an attempt had been made to limit so narrowly the scope of a process which had been highly praised at the sixth Conference of Heads of State or Government of Non-Aligned Countries, held at Havana in September 1979.
95. Referring to annex III, his delegation wished to make it clear once again that it was pressing for the inclusion of a truly effective anti-monopoly clause, the details of which were given in the report of the co-ordinators.
96. The last category of problems to be resolved by the Conference included those which arose only because what was required was to define the new law, and also to formulate it in a convention (preambular clauses, general provisions, provisions on the settlement of disputes, final clauses). He considered that substantial work had been done in those areas.
97. In his opinion, the main system for the settlement of disputes constituted an equilibrium which it would be dangerous to call in question. Article 188, which provided for the establishment of special chambers to deal with disputes concerning Part XI, unquestionably introduced one of the advantages of arbitration, which consisted in enabling the parties to a dispute to participate in the appointment of the judges. In its present form, however, the negotiating text was still inadequate with regard to both the composition of the special chambers and the disputes that might be submitted to them. The final clauses were, on the whole, satisfactory despite the fact that some elements still had to be re-examined and that there was a need for a clause providing for the participation of the European Economic Community.
98. In the opinion of his delegation, it was essential that the French version of the future convention should be as accurate as possible. It was therefore important that the French language group and the Drafting Committee should be able to carry out the vital work of textual revision. The statement that the next session

of the Conference would be the last devoted to negotiations had for the first time some credibility. That was no empty praise, but was all the more deserved since the Conference had returned to the principle of consensus which had overshadowed its work at the outset. It had thus recognized that in the modern world no international relations could be acceptable between sovereign States and no rules could be valid for them unless they had been freely agreed to by the parties concerned.

99. Mr. AKINJIDE (Nigeria) said that the question of the future system for the exploration and exploitation of the Area was among those which had remained unresolved at the end of the first part of the ninth session in New York. Progress had been made on various other points, such as the definition of the continental shelf, the rules governing marine scientific research on the shelf and the 200-mile exclusive economic zone.

100. With regard to the exploitation of the Area, his Government had favoured the joint venture system of exploration and exploitation. In the end that system had not been accepted since the Conference had preferred the "parallel system". His delegation thought that with goodwill on the part of all concerned, the system adopted would work. With respect to the details of operation, it was his delegation's understanding that States parties to the convention would provide one half of the funds which the Enterprise would need for its first mining venture and would guarantee the loans contracted by it in order to obtain the other half. The Conference still had to decide whether that arrangement would suffice to make the Enterprise operational and how the initial shortfall would be financed if potential contributors were slow in ratifying the convention. Final agreement also had to be reached on the level of the taxes which contractors would pay to the Authority in respect of the proceeds of their operations.

101. In addition to financial support, the Enterprise would need technology. Simply ensuring that a third party contractor transferred technology to the Enterprise without imposing any obligation on the developed countries was unsatisfactory. The provisions on those two issues would have to be improved before they were acceptable to his delegation. Furthermore, training should be accorded priority in order to make the transfer of technology truly meaningful and the parallel system operative.

102. With regard to production policies, negotiations had sought to bridge the differences between countries which stood to benefit economically from larger and possibly cheaper supplies of minerals from the areas, and countries which wanted to protect their own land-based mining interests from the serious harm they would suffer as a result of the availability of rival sources of minerals. Article 151 of the negotiating text aimed at limiting sea-bed production to a level that would not harm land-based producers but would ensure an adequate supply to consumers. The production growth rate had been fixed at 3 per cent, of which 60 per cent would be for sea-bed resources and 40 per cent for land-based resources. A "safeguard clause" had also been introduced to protect land-based producers from a decline in sales during times of a sluggish market. That formula was unsatisfactory to developing countries which were land-based producers of minerals also found in the sea-bed. His Government had advocated that the growth rate should be reduced to 2 or 2.5 per cent and the safeguard clause reduced from 100 to 70 per cent. That position was supported by a large number of developing countries and some developed countries. The compensatory provisions of article 162, paragraph 2 (m), and article 173, paragraph 2 (c), were illusory and contained a promise which was inadequate to meet the legitimate concerns of the land-based producer developing countries, whose interests would be affected by the flooding of the market with production from the sea-bed.

103. The question of decision-making by the Council had also been the subject of controversy. The western European States had rejected the three-fourths majority formula. The two-thirds majority formula giving a right of veto to all geographical groups was unacceptable. His delegation could not support any formula that provided for a right of veto for any group of interests. The

new wording of article 161, paragraph 7, which would combine the use of the two-thirds majority, the three-fourths majority and consensus on certain well-defined issues, offered a much better solution than that contained in the second revision of the negotiating text. His delegation was able to support it in a spirit of compromise and as part of the package.

104. With regard to the review conference, his delegation regretted that article 155, paragraph 4, in the second revision, based on the provisions of paragraph 6 of the same article in document A/CONF.62/WP.10/Rev.1, no longer provided for a moratorium or any other effective means of control. It would be preferable to revert to the previous text.

105. It was common knowledge that Nigeria had, by Act No. 28 of 1978, established its exclusive economic zone. While most issues relating to the exclusive economic zone had been resolved, some delegations were pressing for changes in the existing provisions which, in the opinion of his Government, were satisfactory.

106. Despite lengthy negotiations, the Conference had been unable to reconcile the opposing views on the delimitation of the maritime boundaries of coastal States (arts. 74 and 83). Nigeria was in favour of the median or equidistance line principle but did not believe that the adoption of such a formula would rule out the possibility of agreement by the States concerned to make any changes in the formula that might be justified by circumstances. Nigeria had, in fact, embodied those principles in its legislation. Moreover, it rejected any compulsory adjudication on the settlement of disputes in that field, but it could accept compulsory conciliation machinery. Although it had not yet been possible to reach agreement, it seemed that the solution to the problem was in sight. It should certainly be resolved by the next session.

107. A complex legal definition had been devised to delimit the part of the sea-bed under national jurisdiction. However, some delegations challenged various aspects of that definition, claiming that it gave too much to coastal States with broad continental shelves and took away too much from the common heritage of mankind lying beneath the ocean. General agreement had been reached on the establishment of a commission on the limits of the continental shelf, but various questions of detail remained unresolved. Similarly, it would be necessary to determine the amount of the proceeds obtained by coastal States from exploitation carried out more than 200 miles off shore that they should share with the international community. The rights of coastal States in respect of archaeological and historical objects found on the continental shelf must also be defined. It would be recalled that Nigeria's position on that issue was that the breadth of the continental shelf should be coterminous with that of the exclusive economic zone; however, his delegation was prepared, in a spirit of compromise, to accept the existing principles which could almost be equated to the natural prolongation principle.

108. In a related field, a decision would also have to be taken on a proposal to make the innocent passage of warships in the 12-mile territorial area subject to prior authorization by, or notification to, the coastal State. In that connexion, Nigeria could endorse the relevant provisions of the second revision of the text as they stood at present.

109. The principle adopted on pollution and the preservation of the marine environment was generally satisfactory. General agreement had been reported on a consensus régime for foreign marine scientific research in the exclusive economic zone or on the continental shelf. His delegation was in favour of abandoning implied consent and welcomed the fact that the coastal State could withdraw its consent if research was used for an improper purpose. It also endorsed the idea that the coastal State whose territory was involved could participate in the research and share in the benefits of the data obtained therefrom.

110. With regard to the final clauses, there were still a number of very controversial matters to be resolved, such as the question of signature, the number of ratifications necessary for the entry into force of the convention, the time-lag between the last ratifi-

cation and entry into force, reservations, amendments and denunciation.

111. Mr. TIWARI (Singapore) observed that the most notable progress had been made in matters falling within the purview of the First Committee. The complicated question of decision-making in the Council of the Authority, which had long seemed insoluble, had been resolved. Improvements had also been made to the text on production policies and the transfer of technology. His delegation was in favour of incorporating in the third revision all the amendments suggested in document A/CONF.62/C.1/L.28/Add.1. The text, as revised, seemed to offer substantially improved prospects of consensus.

112. With regard to Second Committee matters, his delegation had repeatedly stressed the importance of drafting a definition of the continental shelf that was clear and easy to apply. It attached great importance to that question and therefore considered it absolutely essential—especially when the definition of the continental shelf was not only unclear but complicated—that the commission on the limits of the continental shelf should be composed in such a manner that its integrity was not open to question. Annex II of the second revision offered few guarantees in that regard, since it provided only that election to the commission should be on the basis of the principle of equitable geographical representation. That method of selection left open the possibility that the commission might be dominated by nationals of broad-margin States and their sympathizers. Annex II should therefore be modified in such a way as to ensure that relevant interest groups were fairly represented in the commission.

113. Other aspects of annex II were also unsatisfactory. For example, article 2, paragraph 5, provided that the State party which submitted the nomination of a member should defray his expenses. That provision could only act as a disincentive to nomination by countries which had no direct interest in continental shelves and would be likely to increase doubts concerning the integrity of the commission. His delegation therefore suggested that the expenses should be borne either by the broad-margin States or by the Authority.

114. Also with regard to Second Committee matters, his delegation supported the inclusion in the revised text of those parts of Informal Paper 14 to which there had been no objection. It also supported the Nepalese proposal on the common heritage fund. It was undeniable that under the proposed convention vast areas of ocean space and large amounts of resources would accrue to a small number of countries. More exactly, 10 countries would obtain more than half of all the exclusive economic zones in the world and only 1 of those 10 was a poor country. In view of the fact that, under traditional international law, all the wealth of the exclusive economic zones was common property or no one's property, it was to be hoped that the Conference would—in some small measure—improve that inequitable situation by adopting the common heritage fund proposal.

115. Referring to Third Committee matters, his delegation supported the incorporation of the changes proposed in documents A/CONF.62/C.3/L.34/Add.1 and 2, in respect of which no objection had been raised in the Committee. Those changes would improve the clarity of Parts XII, XIII and XIV.

116. With regard to the final clauses, general provisions and settlement of disputes, the President's skill and wisdom had made it possible to arrive at compromise formulas on most of the relevant articles and on the text relating to the rationalization of the conciliation provisions. His delegation supported the inclusion of those various provisions in the third revision. It wished, nevertheless, to stress, as it had already done at an informal meeting of the plenary Conference, that as a result of the addition of the word "exclusively" in article 306, paragraph 3 (see FC/21 and Add.1), and of its deletion from paragraph 1 of the same article, there was no amendment procedure for a large number of questions under the convention, i.e. those relating partly to

the Area and partly to another aspect of the convention. It would therefore be desirable to insert the word "exclusively" after the word "relating" in the first sentence of article 306, paragraph 1. If that change caused difficulties for some delegations, his delegation was prepared to accept any other amendment that might resolve the problem, which the Conference could not leave outstanding. The search for a compromise could not be used as an excuse for knowingly leaving lacunae in the text, since that could only lead to unnecessary difficulties. His delegation wished to thank the President, who had reflected those concerns in paragraph 6 of his report and had suggested that the matter required careful examination.

117. Mr. OSMAN (Egypt) expressed gratitude to all who had contributed to the drafting of the informal composite negotiating text. His delegation had participated in the negotiations in the First Committee which had given rise to the proposed amendments in document A/CONF.62/C.1/L.28/Add.1. These amendments supplemented the package deal and, it was to be hoped, would be acceptable to everyone.

118. His delegation nevertheless noted with concern that the draft text of the convention was still a long way from meeting the wishes of the developing countries. In particular, there was a certain imbalance between the powers of the Council and those of the Assembly the new paragraph 2 of article 162 must be interpreted in the light of article 158, paragraph 4. The latter paragraph contained no suspensive provision, even though such a provision would have been beneficial to the world economy and would have assisted developing countries to adjust their positions. His delegation had proposed a new wording for article 158, paragraph 4, which, when taken in conjunction with articles 150 and 151, would have gone some way to meet the legitimate demands of the developing countries. It hoped that when the third revision was being prepared, that proposal would be taken into account.

119. His delegation would also like to see an improvement to annex III, article 5, which was not acceptable in its present form.

120. The new text concerning the decision-making procedures in the Council, while not entirely satisfactory, represented an improvement. His delegation felt that more work needed to be done on that question.

121. Further work was also needed on some other aspects of the negotiating text. With regard to the passage of warships in the territorial sea of coastal States, his delegation considered that prior notification was essential, as the sovereignty and security of the coastal States were involved and they must be able to take the necessary measures in the event of violation of the applicable rules. Certain States, supporting the informal document dated 20 March 1980, had called for negotiations on the matter but so far they had received no response; it was to be hoped that the problem would be solved in the near future. In particular, the right of the coastal State to exercise the same rights in the contiguous zone should be clarified. Authorization by the coastal State must also be required before the passage of nuclear ships or vessels carrying dangerous goods in the territorial sea of a coastal State could be allowed.

122. As to the delimitation of the exclusive economic zone and the continental shelf, his delegation considered that delimitation and the settlement of disputes should form an inseparable whole.

123. Some improvements had been made to the articles dealt with in the Third Committee, but his delegation nevertheless felt that the earlier text of article 263 had been better balanced and would like that article to be renegotiated. He reaffirmed his delegation's over-all position concerning marine scientific research, as provided for in Part XIII of the negotiating text. The guarantees provided for coastal States in the earlier text should be restored, in particular with regard to scientific research conducted on their behalf by other States.

124. His delegation appreciated the results of the work on the final clauses and the settlement of disputes. While hoping that the text could be made even more precise, his delegation was prepared, in a spirit of compromise, to endorse it as it stood.

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

125. Mr. DJALAL (Indonesia) welcomed the results so far achieved at the Conference but said that the proposed third revision of the text still contained wordings which were not fully satisfactory to his delegation.

126. As was well known, his country's interests in the Conference were manifold and included, *inter alia*, the legal régime of archipelagic States and that of straits used for international navigation, the rights of coastal States over the exclusive economic zone and the continental shelf, the protection of the economy of land-based producer States from the possible adverse effects of mining in the international sea-bed area, the problems of delimitation between States with opposite or adjacent coasts and many other issues still under discussion.

127. His delegation was happy to note that a consensus seemed to have been reached on draft articles relating to archipelagic States and straits used for international navigation. For more than three years those two legal régimes and many other issues debated in the Second and Third Committees had been considered as settled by the Conference. His delegation therefore fully supported the President's appeal that issues that had been considered settled should not be reopened for further discussion.

128. With regard to issues considered by the First Committee, Indonesia's basic position was dictated by the fact that it was a developing country, a member of the Group of 77 and a land-based mineral producer. While Indonesia supported the rational exploitation of the sea-bed resources by the Enterprise and by other entities for the benefit of mankind as a whole, its primary interest was to ensure that the economies of current and potential land-based mineral producers would not be adversely affected by activities in the sea-bed area beyond the limits of national jurisdiction. His delegation noted that the negotiations on that issue seemed to have produced some results which could be used as a basis for consensus.

129. On the question of the transfer of technology, his delegation believed that certain improvements had been made and hoped that others could still be made in order to strike a balance between the interests of the Enterprise and the developing countries, on the one hand, and the possessors of the technology and scientific knowledge, on the other.

130. Owing to its political overtones, the problem of voting in the Council was one of the most difficult aspects of the functioning of the Authority. In that respect, his delegation abided by the position of the Group of 77, which as a matter of principle, rejected the incorporation of any form of veto power in the decision-making procedure of the Council and therefore considered that decision-making on the basis of a two-thirds majority, as proposed by the Group of 77, was the most appropriate solution. His delegation would, however, welcome any reasonable compromise solution on that difficult issue. It regretted that one of the items requiring decision by consensus in the Council was the implementation of article 162, paragraph 2 (*i*), namely, the adoption of the necessary and appropriate measures to protect the developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price or volume of exported minerals as a consequence of the mining of the same minerals from the sea-bed area beyond the limits of national jurisdiction. His delegation felt that the consensus procedure on that matter would immobilize the Council when it came to take a decision to protect the developing countries. It was his delegation's understanding, however, that the inclusion of paragraph 2 (*i*) in the list of items to be decided by consensus by the Council should not in any way affect the implementation of article 151 on production policies relating to the international sea-bed area.

131. His delegation regretted the deletion of paragraph 3 (*c*) from annex III, article 6, relating to the approval of plans of work submitted by applicants. In particular, it regretted that under the provisions of the third revision, the approval of plans of work would be practically automatic, whereas in accordance with the former paragraph 3 (*c*) the Authority would not approve a plan of work if, as a result of such approval, the production limitation set in article 151 would be surpassed.

132. The delimitation of maritime boundaries between States with opposite or adjacent coasts was one of the most difficult issues before the Conference in that it attempted to establish general legal norms applicable to almost as many specific geographical situations as there were countries participating in the Conference. The latest compromise proposals contained in the second revision did not yet seem to command general acceptance and did not adequately reflect the principle of equidistance. His delegation hoped that serious efforts would continue to be made in order to reach an acceptable compromise formula before the end of the session. He reiterated his delegation's view, which was shared by many other delegations, that the boundary of the continental shelf and of the exclusive economic zone between States with opposite or adjacent coasts should not necessarily be the same since they were governed by two different legal régimes.

133. His delegation noted with appreciation the significant progress made by the Drafting Committee and expressed the hope that the self-restraint recently manifested in that Committee would continue to prevail in its future work, so that it should not be used as a vehicle for making substantive changes in a text which had been so carefully and painstakingly negotiated.

134. In conclusion, his delegation welcomed the progress made on the general provisions settlement of disputes and final clauses, and hoped that that progress would give the necessary impetus to the solution of the last remaining hard-core issue, namely, the delimitation of the territorial sea between States with opposite or adjacent coasts.

135. Mr. TORRAS DE LA LUZ (Cuba) said that, since the convention to be drawn up by the Conference would necessarily have to be based on mutual concessions, his delegation agreed to the incorporation of the text resulting from the negotiations in the First Committee into the third revision of the informal composite negotiating text.

136. As a country whose future staple export would be nickel, Cuba was particularly interested in the formula for limiting production from the Area and recognized that the solution provided for in articles 150 and 151 represented the only possible compromise which would take into account the various interests concerned. His delegation, however, shared the fears of certain cobalt-producing countries that the development of production in the Area might in a short time saturate the market for that metal. It therefore welcomed the new paragraph introduced into article 150 and the changes made in article 151, paragraph 4, in order to protect producer countries which were members of the Group of 77, and hoped that the collegium would try to strengthen those provisions even further. With regard to article 151, paragraph 4, he wished to make it clear that his delegation interpreted the measures referred to as relating only to article 162, paragraph 2 (*m*), and not to paragraph 2 (*l*) of that article.

137. Noting that the text of Part II of the second revision afforded greater protection to coastal States with regard to the territorial sea and contiguous zone than the 1958 Geneva Convention had done, his delegation hoped that the present text would be maintained unchanged.

138. Speaking on behalf of a country which had made concessions concerning the exclusive economic zone dealt with in Part V—for Cuba could by no means enjoy a zone of 200 nautical miles—his delegation was firmly opposed to any re-opening of the discussions on that part of the text.

139. As to the settlement of disputes, he reiterated his delegation's willingness to endorse the compulsory conciliation procedure, but not the procedures for compulsory settlement, unless the parties concerned agreed to such a course.

140. He reiterated his delegation's opposition to any legislation enacted by the United States of America or the Federal Republic of Germany which would confront the international sea-bed Authority, which the Conference was endeavouring to establish, with a situation which was likely to prejudice its activities from the very outset.

141. Lastly, he appealed to the Collegium, at a time when it

was preparing the third revision, to reflect the present general debate in an objective manner so that at the next session of the Conference the convention might be adopted.

142. Mr. NARAKOBI (Papua New Guinea) said that the results of the Conference so far achieved reflected the growing co-operation and interdependence of the world community and represented a great stride forward in human history.

143. However, with regard to the new proposals for Part XI and annexes III and IV (A/CONF.62/C.1/L.28/Add.1) to be incorporated in the third revision, his delegation had certain misgivings. Article 150, subparagraph (i), for example, did not afford sufficient protection to the markets of land-based metal producers and should be made clearer. Despite the good intentions expressed in paragraph 1 of article 151, paragraph 2 of that article was not satisfactory. In his delegation's view, the figure of 3 per cent for the rate of increase in nickel consumption was too high and, if taken in combination with the 60 per cent share of the future growth allowance and with provisions for individual nodule miners to increase production, the 3 per cent would provide no protection for existing land-based producers. There was a danger that, under the proposed terms, sea-bed miners would be able to respond to the vicissitudes of the nickel market more swiftly and at less cost than land-based producers. The 60 per cent share, along with the proviso contained in article 151, paragraph 2 (e), would add to that capability. When the third revision was being prepared, more attention should be given to the methods of production of other metals, particularly copper. Provision must be made for the future since, by the 1990s, there was likely to be direct competition between nodule miners and land-based producers, and unless the mechanism was tightly controlled, land-based mining activities would be jeopardized. His delegation therefore felt that there should be provision for consideration of the situation in the associated nodule metal markets at the time of authorization of nodule mining applications.

144. Turning to article 161, relating to the composition of the Council, he expressed the view that paragraph 1 (d) should make specific reference to the fact that the "special interests" of the developing States referred to were those of land-based mineral producers.

145. His delegation was not satisfied with the provisions regarding delimitation. It considered that heed should be taken of the views of at least 29 sovereign States in the revision of the composite text.

146. The question of innocent passage had still not been satisfactorily settled. His delegation's view was that prior authorization or notification, in the absence of bilateral arrangements, was a right of the coastal State which must be respected before warships could navigate in the territorial sea. In view of modern technological developments, it was all the more important that coastal States should secure that right.

147. In conclusion, he reserved his delegation's right to make a further statement on the package as a whole at a later date.

148. Mr. USHEWOKUNZE (Zimbabwe) expressed his delegation's appreciation for the considerable progress that had been made towards the formulation of a compromise text and its hope that all concerned would share its willingness to continue negotiations on the outstanding issues. Those issues included some that would affect the future economic well-being of his country, namely, the questions of access to mineral markets, production safeguards and compensation.

149. As a land-locked country heavily dependent on the export of minerals and metals to distant consumers, Zimbabwe was anxious that the convention should ensure that such commodities had equal access to markets whether they were mined on land or on the sea-bed. To that end, sea-bed minerals must be regarded in the truest sense as a common heritage of mankind, to be extracted by licensed operators from international territory beyond the territorial jurisdiction of any State, and must be treated as imports on entering national jurisdiction. Since article 150, subparagraph (i) in document A/CONF.62/C.1/L.28/Add.1 was silent

on that point, his delegation proposed that it should be amended to read:

"The Authority shall ensure that minerals and metals produced from the Area shall be regarded as imports for purposes of national legislation of all States Parties to this Convention and shall be accorded conditions of access to national markets no more favourable than the most favourable applied to similar minerals and metals from other sources."

150. With respect to production safeguards, article 151, paragraph 2 (b) (i), should be amended to impose a 10 per cent limit on sea-bed production during periods of low growth. That change would be consistent with the principle that his delegation regarded as implicit throughout article 151, namely that sea-bed and land-based producers should share not only the benefits of increases in consumption, but also the burdens of a recession. In keeping with the same principle, article 151 should be supplemented by a paragraph 2 (b) (iv) reading:

"Provided that in any year of the interim period the total sea-bed production of nickel, cobalt, copper and manganese permitted shall not result in the reduction of land-based production of the same minerals to a level below the average of the annual production level achieved in the immediately preceding five-year period for which data are available."

151. That provision would afford land-based producers the barest minimum of protection during the inevitable production cut-backs by preventing sea-bed producers from unfairly displacing them from traditional markets.

152. The provisions concerning compensation to be found in article 151, paragraph 4, failed to define the essential characteristics of the system of compensation itself or the majority to which a decision by the Economic Planning Commission to advise payment would be subject. Furthermore, the paragraph made compensation an alternative, rather than a complement, to other measures of economic adjustment and said nothing about the adequacy of compensation or the time-limit for its payment. The requirement in article 161, paragraph 7 (d), that decisions by the Council of the kind referred to in article 162, paragraph 2 (l), should be subject to consensus was unduly stringent. In that connexion, his delegation supported the amendment concerning consensus that had been submitted by the delegations of Zambia and Zaire, and further proposed that questions of substance arising under article 162, paragraph 2 (l), should be subject to the rule stipulated in article 161, paragraph 7 (b).

Mr. Amerasinghe resumed the Chair.

153. Mr. WAPENYI (Uganda), speaking as Chairman of the Group of 77, said that the members of the Group were prepared to accept, as the outcome of considerable efforts and as a basis for the further revision of the negotiating text by the collegium, the package deal which had now been devised and whose salient points were the sharing of benefits, production policies, the review conference, and, most important of all, decision-making mechanisms and transfer of technology. Their acceptance did not, however, preclude the expression by individual countries within the Group of reservations concerning specific parts of the package which they found unacceptable.

154. He reiterated the Group's concern about instances of unilateral action on deep-sea mining and its condemnation of the moves that had been made in that respect by the Government of the United States of America. If the Federal Republic of Germany had followed the United States' example, as had been rumoured, it too would stand condemned by the whole of mankind, with the exception of those States, such as the United Kingdom, France and Japan, whose legislative bodies were contemplating similar action. The Group of 77 urged all Governments to refrain from action of that nature and to bear in mind that the efforts to draft a comprehensive convention on the law of the sea were being made in the interests of international peace and security and of the promotion of co-operation and mutual understanding among nations. The Group reserved the right to take any appropriate measures to repudiate legislation that went against those

interests and to safeguard the resources of the international sea-bed area, which were the common heritage of mankind.

155. Continuing as the representative of Uganda, he emphasized the great hope that countries which, like his own, were geographically disadvantaged placed in the work of the Second Committee. In keeping with the 1974 Kampala Declaration,⁵ countries like Uganda continued to hold the view that, in areas beyond the 12-mile territorial sea, coastal States should have not complete sovereignty, but only limited jurisdiction over the living resources of the zone up to 200 miles from their shores. While coastal States would have the lion's share in the exploitation of such living resources, that exploitation must be shared by the land-locked and geographically disadvantaged States of the region, as recommended in the declaration of 1973 by the Organization of African Unity⁶ on the issues of the law of the sea. It was to promote the sharing of the living resources of the area he

⁵ *Ibid.*, vol. III (United Nations publication, Sales No. E.75.V.5), document A/CONF.62/23.

⁶ *Ibid.*, document A/CONF.62/33.

had mentioned and of the seas beyond the 200-mile limit that his delegation had proposed the establishment of a common heritage fund, the acceptance of which would represent a giant step towards protecting the interests of the poorest nations of the world.

156. With regard to the question of transit rights, his delegation believed that, rather than the third-party privileges which were available to all, the ships of land-locked nations should enjoy most-favoured-nation status when visiting the ports of coastal States.

157. Uganda shared the concern that had been expressed about the trend towards the awarding to consortia of unlimited powers to undertake sea-bed mining without thought for the damage that would cause to the interests of land-based mineral producers like itself. It was, therefore, participating in the efforts of present or potential land-based producers to devise appropriate safeguards for incorporation in the final treaty. Discussions concerning a compromise on that issue could be held in the interval before the next session of the Conference.

The meeting rose at 7.45 p.m.

136th meeting

Tuesday, 26 August 1980, at 10.30 a.m.

President: Mr. H. S. AMERASINGHE

General debate (continued)

1. Mr. SHARMA (Nepal) said that his delegation had noted with satisfaction the package deal concluded in the First Committee (see A/CONF.62/C.1/L.28 and Add. 1). It considered, however, that, in view of their insignificant benefits from the exploitation of the resources of the exclusive economic zone and the continental shelf, developing countries, and particularly the least developed and land-locked countries, should be exempted from payment of any contributions for the funding of the Enterprise. All delegations should be given some time in which to examine the implications of the package deal. It should be made clear whether or not article 140 favoured the least developed countries and what was meant by the term "non-discriminatory basis".

2. He reminded the Conference of the proposal for the establishment of a common heritage fund, originally introduced by Nepal. Its basic purpose was to ensure that a substantial portion of ocean mineral revenues was used to promote human welfare, principally by assisting developing nations, to promote world peace, to protect the marine environment, to foster the transfer of marine technology, to assist the relevant work of the United Nations and to help finance the Enterprise. Such a fund could provide as much as \$5 billion annually for development and other international purposes. The proposal would be a major step towards the attainment of the new international economic order and could make an important contribution to improving the general world situation. It would also help the Conference to reach agreement on other outstanding issues and had gained considerable support since its introduction. It was not intended as an attack on the exclusive economic zone: coastal States had a duty to contribute to the international community a portion of the mineral wealth they received under the convention. The sharing with other countries of mineral revenues from the exclusive economic zone was morally appropriate, since ocean resources had been regarded under traditional international law as common property.

3. His delegation did not consider that the exclusive economic zone had already become international law. The Group of 77 had deplored and condemned unilateral action with respect to the deep-sea floor and, in his delegation's view, such action in the off-shore area was also objectionable. The President of the Conference had requested nations to refrain from any unilateral

action while the Conference was in session, and had repeatedly stated that the negotiating text was not a negotiated text and that it had no legal standing. The common heritage fund proposal was in the national interest of every State represented at the Conference.

4. The special session of the General Assembly on development was meeting amid deep disappointment over the donor countries' contribution target of 1 per cent of their gross national product. An announcement that real progress was being made towards the establishment of a common heritage system would be the best news the Conference could give to the special session and would herald a new era in international politics. He therefore urged all delegations to support the proposal.

5. His delegation had consistently advocated that the economic zone should not extend beyond 200 miles and that the continental shelf should coincide with the economic zone. The tendency of some coastal States arbitrarily to extend the continental shelf beyond 200 miles was regrettable; it might diminish the scope and content of the common heritage of mankind, lead to serious conflict and endanger any hope of consensus in the Conference.

6. With regard to the settlement of disputes, the negotiating text should make it clear that some disputes were subject to compulsory jurisdiction while others were not and that some were subject to compulsory conciliation. It was inequitable that the Conciliation Commission should not be empowered to question the exercise by coastal States of their discretionary powers in determining the allowable fish catch and harvesting capacity or surplus.

7. In cancelling out the few rights accorded under customary international law, articles 69 and 70 were unsatisfactory and inequitable. The articles should be improved to accommodate the needs and interests of the land-locked and least developed countries.

8. It appeared that the concept of the economic zone was now to be extended to the high seas. Under the existing articles, the participation of the land-locked and geographically-disadvantaged countries was confined to the small portion of the fish stock known as the "surplus". Those countries should be granted more equitable participation.