

Third United Nations Conference on the Law of the Sea

1973-1982

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145th Plenary meeting

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19. He wished to add to the voice of the Secretary-General the voices of all members of the Secretariat whose work was connected with the Conference, especially the Executive Secretary of the Conference, for whom Hamilton Shirley Amerasinghe had been a warm friend, a hard taskmaster but an understanding and kind individual. He would be remembered by many at both Headquarters and Geneva for his deep respect for the individual, his contagious good humour and his warm personality.

20. Mr. Amerasinghe had possessed a blend of qualities which explained the exceptional role he had played in the Conference. As a man who had deeply loved his shining island of Sri Lanka, he could understand the national loyalty of others. With his appreciation for the beautiful, he had given an aesthetic dimension to his conduct of the business of the Conference. He had loved the United Nations and had been imbued with its purposes and objectives, and he had had a passionate love for the Conference to which he had dedicated the most productive years of his life.

21. He recalled having had the privilege of working closely for nearly eight years with Mr. Amerasinghe, first as a representative of his own country and spokesman for the developing countries, and subsequently for more than six years as Special Representative of the Secretary-General. The first President had been a dear friend and a teacher from whom he had learnt much not only about diplomacy but also about the use of the English language and, above all, about the art of handling difficult responsibilities with elegance and humour.

22. Whatever personal beliefs members might hold, all were convinced that, in some way, Hamilton Shirley Amerasinghe was still present to guide the newly elected President of the Conference and, indeed, all members at a decisive time in the history of the Conference.

23. Mr. PINTO (Sri Lanka) thanked the many delegations which, through the chairmen of their regional groups, had paid an eloquent tribute to the first President of the Confer-

ence for his brilliant qualities of leadership, and also thanked the representative of the host country, the spokesman for the Collegium and the Special Representative of the Secretary-General. As ambassador and permanent representative of Sri Lanka, Hamilton Shirley Amerasinghe had been called upon to play a leading role in many initiatives that had transcended his mission as a representative of his country. He had responded with extraordinary ability and dedication, with justice and integrity, and with an irrepressible good humour and humanity that had endeared him to all those with whom he had had to deal.

24. Working with Mr. Amerasinghe through most of his brilliant United Nations career had provided an opportunity to know at first hand the extraordinary range of his capacities and his outstanding effectiveness as an internationalist and diplomat. As had been suggested, the greatest tribute to him might well be the early completion of a convention on the law of the sea, followed by its early signature, ratification and entry into force, the task to which he had given some of the best years of his life.

25. The delegation of Sri Lanka would convey the sentiments expressed at the meeting to its Government and to Mr. Amerasinghe's family. His memory would live for ever in the hearts of all who had known him. Those who would some day walk the halls of the future international sea-bed Authority might well recall the saying in Latin, a language Mr. Amerasinghe had loved nearly as well as his native Sinhala: *Si monumentum requiris, circumspice*.

26. The PRESIDENT asked the delegation of Sri Lanka to transmit the record of the commemorative meeting to the Government of Sri Lanka and the close relatives of Mr. Amerasinghe. The best tribute to his memory would be the completion and adoption of a generally acceptable convention on the law of the sea in 1981, so that the convention would be linked forever to his name.

The meeting rose at 12.05 p.m.

145th meeting

Tuesday, 17 March 1981, at 3.15 p.m.

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

Adoption of the agenda for the session (A.CONF.62/107)

The agenda was adopted.

Election of a Vice-President

1. The PRESIDENT said that the Chairman of the group of Asian States had informed him that Sri Lanka had been nominated by that group to replace Singapore as Vice-President. If he heard no objections, he would take it that the Conference wished to elect Sri Lanka as one of its Vice-Presidents.

It was so decided.

Organization of work

2. The PRESIDENT said that the programme of work proposed in his note (A/CONF.62/110) embodied the recommendations of the Collegium, which had been endorsed by the General Committee at its 59th meeting on 16 March.

3. A tentative schedule of meetings for the period 17-27 March had been circulated to delegations. The Collegium had used as the basis for its work the programme of work submitted by the former President of the Conference on 28 August 1980 (A/CONF.62/BUR.13/Rev.1), which singled out four outstanding matters that should be taken up at the tenth session; they were: the work of the Drafting Committee and the man-

ner in which its recommendations affecting those parts of the draft convention falling within the mandate of the Committees should be processed, the participation clause, the mandate of the Preparatory Commission and the treatment to be accorded to the preparatory investments made before the convention entered into force. The discussions and recommendations of the collegium on those matters were outlined in document A/CONF.62/110; in view of recent events the collegium had made no recommendation concerning the fourth outstanding question. As delegations knew, the Chairman of the Group of 77 had informed the Collegium, through the Chairman of the First Committee, that in view of the uncertain attitude of the United States delegation towards the draft convention in general, and towards Part XI in particular, the Group of 77 was not prepared to negotiate on that question until the attitude of the United States delegation towards Part XI was clarified.

4. The Collegium had taken note of the fact that the two interest groups on the question of the delimitation of maritime boundaries between States with opposite or adjacent coasts wished to continue their consultations. The Collegium had therefore recommended that conference facilities should be made available to them for that purpose.

5. Mr. OTUNNU (Uganda), speaking on behalf of the Group of 77, said that it was important to maintain the momentum and gains achieved as the Conference approached its goal. The Group of 77 was deeply concerned about the United States decision to review the whole text of the draft convention, and Part XI in particular. The delegations of the Group of 77 and others had come to the tenth session with a clear understanding that it was to be the last working session of the Conference. The effect of the United States decision was to throw into disarray any programme of exploitation and investment, and it would therefore be impossible to hold meaningful discussions on the matter of preliminary investment guarantees. The United States was fully responsible for that state of affairs.

6. With regard to the reference made by the United States delegation in its statement to the General Committee to a further session of the Conference, he said that the developing countries could ill afford an endless series of sessions on the law of the sea and it continued to be their understanding that the tenth session was to be the last working session of the Conference. The Group of 77 accordingly appealed to the United States delegation to reconsider its decision to review the entire draft, which called into question the product of years of collective labour by all delegations, not least the United States delegation. He urged the United States not to yield to the temptation of unilateralism, whose consequences would be too grave to contemplate, and to join other member States in continuing actively the collective effort to complete the work of the Conference.

7. Mr. MARINESCU (Romania) said that the organization of the Conference's work should be directed towards the achievement of a generally acceptable text that took into account the interests and views of all countries or groups of countries. His delegation hoped that the work of the Conference could be completed successfully as soon as possible, but a speedy conclusion was of less importance than finding generally satisfactory solutions to all outstanding problems. Among the questions on which negotiations should continue were, in the opinion of his delegation, the delimitation of maritime boundaries between States with opposite or adjacent coasts, access to the living resources of the exclusive economic zone for land-locked and geographically disadvantaged States of regions that were poor in such resources, innocent passage of foreign military vessels through the territorial sea of coastal States and certain aspects of the final clauses, such as reservations.

8. The draft programme of work did not indicate how questions pending, other than the four mentioned in document A/CONF.62/110, would be dealt with at the current session: he asked the President where and how those questions would be negotiated. All questions pending would have to be studied carefully, patiently and in a constructive spirit, with due attention given to the interests of all participating countries. This requires real adherence to the rule of consensus which the Conference had decided from the very beginning to use with regard to all problems and all participating States. The provisions on which general agreement had been reached should be preserved. It was his delegation's belief that the convention, one of whose primary aims was to develop the resources of the seas and oceans, as the common heritage of mankind, should reflect the interests of all States, especially the developing countries.

9. The PRESIDENT said that it was his intention to enable delegations to raise any points they wished. He noted that informal meetings of the Second and Third Committees had been scheduled to that end.

10. Mr. USHEWOKUNZE (Zimbabwe) said that the draft programme of work had an element of exclusiveness about it, with its list of only four outstanding items. He reminded the Conference that at the ninth session delegations, including his

own, from a number of land-locked mineral-producing countries in Africa had submitted a letter to the President concerning production policy for sea-bed minerals. The matter was extremely important to those delegations, and he requested that it should be included in the programme of work for the session.

11. The PRESIDENT said that he had discussed the subject mentioned by the Zimbabwean representative with the Chairman of the First Committee, whose report at the end of the ninth session had included a reference to it. He requested the delegations concerned to have consultations with the Chairman of the First Committee on how best to deal with the matter.

12. Mr. ROSENNE (Israel) said that his delegation had some reservations concerning the recommendations of the General Committee but was glad to see that the work of the Drafting Committee on Parts XI, XV, XVI and XVII was to continue. The product of so much work on unification and of the arduous tasks of harmonization and language concordance should not be prejudiced but, indeed, preserved.

13. His delegation felt that, in the early stages of the session, it would be appropriate for the Collegium to be the first body to examine the report of the Drafting Committee with a view to referring to the plenary meetings only those recommendations with regard to which it found itself in difficulties. The Collegium might also take a look at recommendations of broader linguistic scope and itself accept those which did not give rise to controversy as to their purely drafting character. A report, or even a series of reports, from the Collegium to the Conference on those lines would save time and be of great assistance to the Conference when it came to take final decisions on the recommendations of the Drafting Committee. Alternatively, the entire report of the Drafting Committee might be taken up in informal plenary meetings. His delegation did not share the view that the report should be divided up and referred part by part to the relevant committee; at any rate, that should not be the point of departure for the work of the Conference.

14. Mr. NAKAGAWA (Japan) said that his delegation preferred informal meetings without records for consideration of the Drafting Committee's recommendations, so as to avoid lengthy expositions of substantive views of delegations on individual articles.

15. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation was completely satisfied with the proposed programme of work. In common with other delegations, it attached great importance to the delimitation of maritime boundaries between States with opposite or adjacent coasts. At the ninth session amendments to the clauses dealing with that question had been proposed but not agreed upon, and his delegation hoped that the interest groups would continue their consultations and reach consensus.

16. His delegation hoped that every effort would be made to ensure that the current session was the last working session and that the convention would be signed in 1981, despite the unexpected action by the United States delegation. That delegation's decision to review what had been accomplished so far had caused problems with regard to the implementation of the work programme, and the spokesman for the Group of 77 had expressed his delegation's views on that subject. Although the draft convention was not fully satisfactory to all delegations, it had been agreed that the current session should be the last negotiating session, and there had been general support for the former President's views that it was imperative to preserve the "package" and not to jeopardize it by reopening issues at the last minute, with the convention so near to completion. To give any delegation the opportunity to reopen discussion on matters already agreed upon would mean that all delegations would have to be given the same opportunity, and that was tantamount to jettisoning all the progress made during the pre-

vious seven years. His delegation believed that the United States understood those considerations and would not undermine the Conference by creating new problems.

17. Mr. ARIAS SCHREIBER (Peru) said that the recent announcement by the new United States Administration had been both unexpected and inconsistent with the position of the United States delegation throughout the preparation of the draft Convention; moreover, it had violated the agreement reached by consensus in Geneva to complete the negotiations at the tenth session and have the convention opened for signature in 1981. It was difficult to understand the reasons for such a stand, since no international negotiations could ever make progress if they were affected by every change of Government. In the case of the Conference, it was disconcerting to find the United States, which had used all the pressure it could to protect its national interests in all parts of ocean space, demurring at the last minute at agreements which it had negotiated with other States.

18. That action was all the more regrettable in view of the developing countries' acceptance of compromise provisions with regard to the régime of the sea-bed and ocean floor beyond the limits of national jurisdiction. The developing countries had made many other concessions: they had agreed to the Conference proceeding by consensus and had made a series of concessions with regard to the context of Part XI of the draft convention, and that co-operative attitude should be met in the same spirit. Accordingly, while the developing countries were prepared to accept a programme of work that envisaged deferring much of the work of the Conference in order to give the new United States Administration time to complete its review of the draft convention, they expected that Administration carefully to examine the reasoning underlying the existing text and to refrain from proposing substantive change otherwise the Conference was likely to fail, a development which would have very serious repercussions for all members of the international community.

19. The concessions made by the developing countries in accepting the draft convention as it stood as a single "package" were so substantial that any revision of Part XI on the insistence of a particular State would authorize them, and indeed all States, to reopen discussion on all other parts of the text. That would undoubtedly spell the end of the effort to adopt a convention by consensus, and the State which had opened Pandora's box would be to blame.

20. The consequences of such a development would be manifold. The destruction of a most important achievement in international relations would tempt individual States or groups of States to go back to applying domestic legislation or regional or subregional agreements to the use of the seas and the exploitation of their resources, without regard to the interests of third States. Developing countries and other States would feel free to use the political and legal means available to them to prevent unilateral action to exploit the sea-bed and ocean floor, which were the common heritage of mankind. Finally, the failure of the Conference would affect other ongoing negotiations and worsen the climate of tension, confrontation and reprisals that prevailed in international relations.

21. His delegation accordingly hoped that the United States Government would reconsider its decision with the greatest care. In a conference of over 160 countries whose circumstances and interests were so disparate, the draft convention could not be wholly to any one State. A universal convention necessarily required individual positions to be reconciled through compromise formulas based on reciprocal concessions. Any departure from agreements reached earlier would jeopardize the negotiations, since the necessary margin of credibility would be lacking, and for that reason the Group of 77 had declared that it would not negotiate on outstanding issues until all delegations were willing to give the draft convention formal status.

22. His delegation was not entirely happy with suggestions made in the President's note with regard to the programme of work (A/CONF.62/110) and suggested that no decision be taken until the matter had been considered further.

23. Mr. FRANCIS (New Zealand) said that from the outset the objective of the Conference had been the adoption of a single, widely accepted convention on the law of the sea. At the end of the ninth session it had seemed that that goal was not far off, and his delegation had shared the hope that the convention could be adopted at the current session.

24. It was a source of deep disappointment to his delegation that that might no longer be possible. Although the informal text of the draft convention was not ideal for any country, including his own, it was the result of negotiations spanning seven years and reflected significant concessions by all interest groups. One of its essential premises was the common heritage of mankind, and his country remained committed to that concept. His delegation was therefore deeply concerned about the potentially serious consequences of any attempt to reopen that or any other part of the negotiated package. It shared the hope of other delegations that it would soon be possible to resolve the few issues which had been left outstanding at Geneva, and that the convention could be adopted on the basis of the long and patient efforts which had gone into negotiating it.

25. Mr. KOZYREV (Union of Soviet Socialist Republics) said that by the end of the ninth session the Conference had reached a stage at which the draft convention on the use of the world's seas and their riches was practically complete. Only a few matters remained to be agreed upon, but if a single convention on the law of the sea was adopted, it was important that there should be no futile discussion of matters already resolved and no new problems brought up at the current session.

26. In considering its plans for the tenth session, the Conference had agreed to strive to adopt the convention in 1981. That had been the understanding of all delegations, including the United States delegation, which had advocated the completion of the work and the adoption of the Convention at the tenth session.

27. However, just a few days before the opening of the current session, the United States had announced a radical change in its position. For purely domestic reasons and on the pretext that the new Administration needed to review its position on the draft convention, the United States delegation had announced that it was not willing to complete the work of the current session by adopting the convention. It was behaving as if the international convention was primarily an internal affair of the United States, regardless of the fact that the use of the seas and their resources directly affected the interests and aspirations of over 150 States. One country, using the excuse of a change of Government, was endangering the success of an international, universal forum: the chaos that would prevail in international relations if other Governments followed the same practice was easy to imagine.

28. The United States Government had stated that it had serious problems in connexion with the draft convention, implying that it found many of the important provisions agreed upon at the preceding session unsatisfactory and that it might demand changes in them. Those provisions were the result of compromises, reciprocal concessions and the adoption of a package of decisions on a whole range of matters relating to the use of the seas and their resources. Those compromises inevitably left many participants in the Conference dissatisfied, including the Soviet Union, but participants should be prepared to assess their value, not on the basis of narrow national interests, but according to how well they took account of the legitimate interests of all Governments, developed and developing, coastal and land-locked. An approach that would make the seas an arena for unilateral, wilful action by Governments and a source of discord and conflict had been rejected

by the international community and the majority of the participants in the Conference.

29. Many delegations were wondering whether there could be any negotiations at the Conference until the United States had determined its position on the draft convention, since its new position might involve the rejection of agreements reached earlier. The action taken by the United States might well indicate that it would seek substantial concessions at the expense of the interests of other countries. His delegation was in full agreement with the position of the Group of 77 and supported its decision not to hold discussions on interim protection for investments; that, and many other related matters, were resolved in the convention itself. At the ninth session, his delegation had agreed to a discussion of the matter on condition that the proposals to be made by the United States should be within the framework of the agreement already reached and in conformity with the draft convention. The United States proposal put forward at the ninth session could not serve as the basis for discussion, since it did not satisfy those conditions.

30. The resolutions of the recent Congress of the Communist Party stated that the Soviet Union would actively participate in the solution of international problems in the areas of raw materials, fuel, energy, production, environmental conservation, the peaceful conquest of space, the use of the sea's resources and the pursuit of a just and equitable system of international economic relations. Guided by those resolutions, his delegation would continue to work to make the new universal convention an important instrument for the development of equitable and fruitful co-operation in the use of the seas and their resources and the strengthening of peace and order on the seas. It accordingly urged all countries represented at the Conference, including the United States, to strive in a spirit of co-operation, mutual understanding and compromise, to complete the negotiations and adopt the convention at the current session. The adoption of the convention would be in the interests of all Governments and of international society as a whole and would strengthen international peace and security.

31. His delegation supported the recommendations of the General Committee on the programme of work for the first two weeks of the session. The Conference should not, however, lose sight of its aim of finishing its work in 1981 with the adoption of the convention by consensus.

32. Mr. BRENNAN (Australia) expressed support for the recommendations of the General Committee on the organization of work. His delegation regretted that the Conference might not be able to adhere to the full programme planned earlier.

33. It was an important objective of his country's foreign policy that some of the doubts which existed in international law should be removed and that some imaginative new concepts, which had already secured very wide support, should be recognized. Specifically, his country supported the demand of coastal States for wider resource jurisdiction in offshore waters, the unambiguous expression of the extent of the sovereign rights of coastal States over the resources of the continental shelf, the clear and specific formulation of rules governing the protection of the marine environment, particularly in offshore waters, the realization of the aspirations of the archipelagic States with respect to the concept of archipelagic waters, the removal of the uncertainties regarding the breadth of the territorial sea, clear and agreed formulations of the rules governing the right of innocent passage through the territorial sea, rights of passage through and overflight of archipelagos, straits used for international navigation, and the exclusive economic zones of States, and of the rules governing the conduct of marine scientific research in those zones and on the continental shelf. Finally, it wished to see the prospect of the exploitation of the deep sea-bed under secure title opened up

as soon as possible, the practical application of the principle of the common heritage of mankind and the putting into effect of the parallel system formulated by the former United States Secretary of State in 1976.

34. He hoped that the United States delegation would give due weight to the objectives and views of his Government in its review of United States policy; those objectives were widely shared by the Conference, and there was no possibility that they could be achieved otherwise than through a single widely-accepted international convention. For any delegation to suggest that it might not accept those basic ideas might have the unintended consequence of putting at risk the attainment of those objectives. He therefore urged that the area of uncertainty be narrowed as much as possible and as quickly as possible. The resumption of negotiations on the understanding that those basic ideas represented a consensus would be in the interest of all delegations.

35. With reference to the attitude of the corporations which had an interest in the mining of the deep sea-bed, he said that it was his delegation's understanding that some of the largest of them were of the view that long-term investment was unlikely except under an internationally agreed régime such as would be provided for under a United Nations convention on the law of the sea. If that was indeed the case, the resources of the seabed beyond national jurisdiction would not be exploited and the common heritage of mankind would remain an empty concept without such a convention. Even a delay in the negotiations might have an adverse effect, because the companies concerned could well lose interest in deep-sea mining and discontinue their developmental work. His delegation found it difficult to reconcile the position of those corporations with the hesitations of the United States delegation.

36. Mr. KIM CHUNG (Viet Nam) stated that his delegation had come to the tenth session with the intention to contribute to its success and was motivated by an acute sense of the common interest of all participants in the Conference. Although his country had, for reasons beyond its control, joined the Conference rather late and was not totally satisfied with the results that had been achieved in the early stages, it had, nevertheless, in response to the appeal made by the former President of the Conference, decided to show moderation in order to facilitate consensus.

37. Suddenly, at the eleventh hour, it found itself faced with a decision by the United States to prevent the completion of the work and to obstruct the adoption of the long-awaited convention. At the very least, such an action was indicative of bad faith, since three previous United States administrations had contributed to the results already achieved. More serious still, in the light of the provisions of recent unilateral United States legislation and of the rumours circulating about mini-conventions among certain Western countries, the attempt to postpone the work of the Conference indefinitely said much about the unavowed intentions of monopolistic circles.

38. The unilateral legislation had already been condemned by the Conference as contrary to international law, and his delegation was sure that the international community would resolutely rise to the fresh challenge facing it. He associated himself with the views of previous speakers who had strongly protested against the untimely new stand taken by the United States. As the representative of a non-aligned country, he was particularly responsive to the call made by the foreign ministers of the non-aligned countries for the tenth session of the Conference effectively to defend the interests of the developing countries. His delegation therefore fully supported the programme of work and the time-table suggested by the President and the General Committee, and endorsed the statement made by the representative of the Group of 77. Unless those who were seeking to tamper with or destroy the outcome of the patient efforts of the Conference quickly changed their minds and co-operated in ensuring its final success, they would have

to bear full responsibility for the consequences of their negative attitude.

39. Mr. GAUCI (Malta) said that, in accordance with the decision that had been taken at the ninth session, his delegation had come prepared to conclude the negotiations on the draft convention and to take a decision on the site of the proposed sea-bed authority, on which there had not yet been detailed discussions. All delegations had known in advance that the current session was to witness the culmination of the negotiations. The negotiations were a continuous process and could not be suspended arbitrarily, and commitments already undertaken could not be disregarded in a manner which struck at the very foundations of the Conference's endeavours. If every delegation took the same attitude as the United States, the convention would not be concluded before the end of the twenty-first century, and the common heritage of mankind would long before that have been absorbed by a handful of corporations. However, his delegation was confident that the determination and enthusiasm of the President would make it possible to identify many areas in which fruitful discussions could proceed.

40. His delegation concurred with the views of the Group of 77 and with the suggested programme of work. In the view of his delegation, the Second and Third Committees should meet to discuss a number of outstanding issues, notably the passage of warships through the territorial sea. After the two weeks' "installation period" the Conference should re-evaluate the situation and decide how to proceed with its programme of work in the light of developments during that period.

41. The PRESIDENT commented that contact had been made in the course of the ninth session with the delegations of Jamaica, Fiji and Malta on the question of the site of the Sea-Bed Authority, and that they had agreed that the matter should be resolved democratically at the current session. If the Conference was agreeable, he would contact those three delegations with a view to reaching agreement on how best to take up and settle that issue.

42. Mr. VALENCIA-RODRÍGUEZ (Ecuador) said that his delegation believed that the Committees should pursue negotiations on outstanding issues, including those which many delegations felt had not been resolved in a way that took account satisfactorily of their rights and interests. Considerable support had been expressed at the ninth session for such negotiations. Only by means of negotiations in good faith could those problems be solved and a universally acceptable convention concluded.

43. His delegation welcomed the President's statement on the programme of work. However, like many others, it was distressed by the attitude adopted by one of the participants in the Conference. His delegation had come to the Conference prepared to work on the basis of consensus, and any attempt to undermine the just rights of States, especially developing countries, and to detract from the principle of the common heritage of mankind which, in the view of the Group of 77, must become a binding rule of international law, would be unacceptable. His delegation was confident that the United States would continue to work in the spirit of co-operation and conciliation that had prevailed throughout the work of the Conference.

44. Mr. RIPHAGEN (Netherlands), speaking on behalf of the 10 member States of the European Economic Community, said there was no doubt that the situation required some re-thinking, although it was the hope of those States that the results of past work would not be put in jeopardy. The goal remained, and it was essential to continue concentrating efforts in order to complete the work of the Conference as early as possible. It was essential that the original time-table should be followed as closely as possible, and the delegations from the European Economic Community hoped and expected

that every delegation would do its utmost to ensure full co-operation. Those delegations saw no reason not to continue where the Conference had left off in August 1980 and therefore supported the recommendations of the General Committee on the programme of work; no time should be lost. The member States of the European Economic Community remained willing to co-operate fully in the effort to arrive at a just and equitable solution of the many problems of the new law of the sea, and were convinced that all delegations would see their way clear to participating in that effort.

45. Mr. BEDJAOUI (Algeria) said that the work of the previous session had given rise to serious expectations that the sustained efforts and strenuous negotiations would finally be crowned with success, and that the tenth session would be the last negotiating session. Since then, pessimism had crept in, with the news that one Government had decided to review the whole draft convention. To attempt to dismantle such a carefully constructed edifice was neither wise nor constructive. If, at such a late stage, one Government wished to go back on the hard-won results of the work, others which had made concessions also had the right to go back on them, but such a procedure would set a dangerous precedent for plenipotentiary conferences. A State which adopted such a destructive attitude would go down in history as being to blame for wrecking the new law of the sea. It was only a short time since the United States had threatened to take unilateral action to exploit the sea-bed if the Conference did not conclude its work at an early date; its new stand was therefore a total and incomprehensible *volte-face*. It was not wrong for the new Administration to review such an important draft convention, but it was unacceptable that it should do so to the detriment of the whole international community and in such a way as to obstruct the work of the Conference at the current session.

46. His delegation had no difficulty in accepting the suggestions for the programme of work but believed that an extremely flexible approach to the time-table would be necessary if the work was to be completed satisfactorily. His delegation would continue to work in the group of 29 to reach satisfactory solutions on the delimitation of the territorial sea between States with opposite or adjacent coasts, and on the protection of preparatory investments. However, he endorsed the position of the Group of 77 that it would be premature to discuss the latter issue while the delegation which had raised the problem had still not stated its position with respect to Part XI.

47. Mr. JAGOTA (India) observed that the suggestions for the programme of work were based on the decisions already taken by the Conference on the basis of a note by the former President (A/CONF.62/BUR.13/Rev.1). The proposed time-table for the following two weeks was satisfactory to his delegation.

48. The draft convention was the product of assiduous negotiations spread over a seven-year period and was the outcome of the reconciliation of major interests and of fair compromises. His delegation hoped that the spirit of co-operation and conciliation would continue to prevail so that the Conference could successfully conclude its work. If any delegation had serious difficulties, it would be better to place them before the Conference in accordance with its procedures. Every care should be taken to ensure that the Conference did not slip back into an era of uncertainty; the substantive elements of the package should not be reopened. In any event, his hope was that things would have become clearer by the time the plenary conference met in the fourth week of the session.

49. Mr. ANDERSEN (Iceland), speaking on behalf of the delegations of the Nordic countries, said that the years of difficult negotiations had led to a draft convention which, in their view, presented a balanced solution to almost all of the many complicated problems of the law of the sea. They had expected the current session to be the last substantive session, and it was therefore with uneasiness and concern that they faced the

possibility that an early conclusion of the work might not be possible. The United States delegation was reportedly not prepared to finalize the text of the convention at the current session, but the Nordic countries hoped that the outcome of the review to be undertaken would not result in proposals for substantial amendments which might jeopardize the many years of work already accomplished. As the Secretary-General had said in his opening statement, the success of the Conference was an essential element in the work of the United Nations. Against that background a constructive attitude was required from all delegations.

50. Several important issues were listed in the programme of work for the session, and negotiations should start as soon as possible. The Chairman of the Drafting Committee was to be complimented on the work already accomplished, but the place would have to be maintained if there was to be a complete and clear text at the end of the session. The Nordic countries firmly believed that the question of participation should be discussed; the question of regional organizations having competence to act in certain areas was especially important. Other important issues were the composition, tasks and mandate of the Preparatory Commission, the composition of the Council of the sea-bed Authority, and certain formulations on delimitation.

51. In conclusion, he said that neither the Conference nor the United Nations could afford to emerge from a 14-year international effort without having produced a convention.

52. Mr. SHARMA (Nepal) said that he was confident that the tenth session of the Conference would be able to reach agreement on a treaty acceptable to all delegations. At the previous session his delegation had requested that some of the outstanding matters should be included in the programme of work of the tenth session, and it would very much appreciate it if the items in question were specifically listed in the programme so that they could be discussed in appropriate Committees and agreement reached on them.

53. Mr. PINTO (Portugal) said that he was sure that the Conference would succeed in finalizing the convention in such a way as to respect the equal rights of all States. The convention was more important to his country than was sometimes realized, and failure to finalize it would hurt Portugal a great deal. His delegation would therefore do its utmost to make the work of the Conference a success.

54. A successful outcome depended on consensus and justice. Several delegations had mentioned issues that had not been settled or dealt with; to the list of such issues he would add the question of the constitution of the Council of the Authority. Portugal was one of the many countries that had never agreed with the provisions on that subject included in the last version of the informal composite negotiating text, and it was their opinion that those provisions were a derogation from the principle of equality of States and did not command consensus. They should therefore be altered, and his delegation hoped that that could be done at the current session. It accepted the time-table suggested by the President.

55. Mr. MOMTAZ (Iran) said that the work of the Conference had reached a crucial stage. His delegation could be counted on to co-operate. It had no objection to the suggested programme of work and time-table. It believed, however, that provision should be made for further discussion of the passage of warships.

56. A matter of greater concern to his delegation was that the progress already achieved, particularly with regard to Part XI of the draft convention, was being questioned by the United States of America. The draft convention was the outcome of long years of negotiations and an objection by the United States would certainly upset the balance of the negotiating text and jeopardize all elements of the "package". Iran, in such circumstances, would no longer consider itself bound by the compromise formulas concerning navigation in territorial

waters or the provisions concerning straits used for international navigation. He accordingly hoped that any obstacles would be overcome as soon as possible and that the United States delegation would not further obstruct the efforts of the international community.

57. Mr. MALONE (United States of America) said that his Government was deeply conscious of the enormous significance of the Conference and of the texts prepared by it. The Conference had before it a draft convention pursuant to which States were expected to define their rights and undertake solemn obligations with respect to matters of vital national and international concern. It accordingly had to be recognized that no Government could rationally approach the draft convention lightly.

58. The new Administration of his country had been faced on taking office not with an ordinary session of the Conference, but with the prospect of a session at which it was contemplated that all negotiations would come to a close, and his delegation had had to decide whether the existing text was likely to prove acceptable to the Administration and the Senate as a legally binding treaty. It would have been an enormous disservice to the years of work of the Conference had his delegation agreed to the termination of negotiations and the formalization of the text without having made such a decision. In the circumstances, the choice had lain between making a snap judgement or undertaking a thorough review of the texts and their history. His Government had taken the one rational course of action consistent with the integrity of the negotiating process, that of ensuring that it had sufficient time to review the text before negotiations were concluded.

59. The Soviet Union and other delegations had placed great emphasis on the importance of continuity in the conduct of long-term international negotiations. The United States recognized that concern, but there were other values of equal relevance. One was the right of the people in a democratic society to elect a new Government. His delegation did not expect the world to come to a halt because it had a new President and a new majority in the Senate, but it would not shirk its responsibility to ascertain the relationship between the draft convention and the policies and goals of the United States Government in coming years.

60. He regretted that the decision had inevitably caused great disappointment among all those who had worked on the text for so long, but a pause for reflection was much better than an irrevocable mistake. He assured the Conference that his Government would proceed with the review as quickly as possible, and would in the course of that review listen to all points of view. He hoped that the review could be completed in a few months, after which time he expected to have a definite and considered position which would form the basis for future policies of the United States.

61. His delegation had stated that its work at the Conference was, of necessity, subject to the over-all position of the United States regarding the review. He wished to co-operate in every way possible in implementing the proposed programme of work and looked forward to a constructive and co-operative relationship with all delegations. Finally, he expressed support for the view that the recommendations of the Drafting Committee should be considered at an informal session.

62. Mr. KOROMA (Sierra Leone) said that the Chairman of the Group of 77 had spoken on behalf of his delegation earlier. His purpose in taking the floor was to seek assurances from the President, as custodian of Conference decisions, that the agreement reached in Geneva in August 1980 regarding the pace and place of future work would be respected and implemented. The intent of the Geneva programme of work, contained in document A/CONF.62/BUR.13/Rev.1, was that the current session would bring the Conference as close as possible to a consensus on unresolved issues of substance. Secondly, and again in accordance with the agreement reached at the

ninth session, the Conference was to decide at the current session what status to give to the treaty text.

63. Notwithstanding the approval by consensus of those arrangements, the situation facing the Conference was that one of the principal parties to the consensus was declining to join in the effort to conclude a comprehensive treaty by the end of the current session; in fact, members of the United States delegation were to try to ensure that negotiations did not end at the current session.

64. It would be recalled that although not one African delegation had supported the position reached at the previous session, in the spirit of compromise, African countries had allowed the provisions in question to be included in the draft convention. His delegation accordingly felt bound to express its grave concern over a decision which, by preventing the Conference from concluding its work, adversely affected the human, economic and financial interests of all other delegations. He therefore hoped that the United States Government would be made fully aware of the concern of the international community about its recent decision. Finally, the Conference should not be subjected to any undue pressure from any one delegation, and the confidence necessary for genuine negotiations must be restored if the Conference was to complete its task at the current session.

65. Mr. OUDOVENKO (Ukrainian Soviet Socialist Republic) expressed his delegation's concern at the United States Administration's decision to review the informal text of the draft convention. The decision breached the consensus reached in Geneva in 1980 and threatened an agreement which, when the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction was borne in mind, had been almost 15 years in the making. If a convention could be produced, it would make the Conference one of the most important diplomatic events of the decade, if not the century. Since the convention would have been reached by consensus, all participants might reasonably be expected to adhere to it. Some circles in the United States, however, were seeking to have their own way where sea-bed mining was concerned. Such an attitude threatened the common heritage of mankind.

66. The decision by the United States to put off the formalization of the text should be rejected as an attempt by certain circles to damage the international climate, at a time when the Communist Party of the Soviet Union had just pledged itself to work towards the conclusion of a treaty on the law governing the oceans and the sea-bed. His delegation was prepared to continue working on the draft convention as before, but did not feel that the Conference was obliged to bow to unfair pressure. It therefore favoured the adoption of a programme of work for the Conference which would culminate in the conclusion of the convention during 1981, as previously agreed.

67. Mr. PRANDLER (Hungary) said that his delegation would prefer to adopt a programme of work for the session which would spell out in no uncertain terms that the major task of the Conference was to adopt the convention on the law of the sea during 1981 and to sign the final act at Caracas, as had been envisaged by the former President in document A/CONF.62/BUR.13/Rev.1. He appreciated the efforts made by the President and the Collegium to stick to the programme of work approved at the ninth session as far as possible and was prepared to accept the recommendations made in document A/CONF.62/110 and the proposed time-table.

68. His delegation wished, however, to place on record its reservations concerning one weakness in the programme of work, the lack of a definite time-table for the adoption of the convention. That weakness had been caused by the new and negative attitude taken by the new Administration of the United States, which disregarded the well-established interest of the international community in finalizing the comprehensive draft convention on the law of the sea, particularly the

interests of land-locked and geographically disadvantaged States, which would obviously suffer most from unilateral steps taken by other States. That was why his delegation firmly associated itself with the statements of the Group of 77 and other delegations which had categorically condemned the change of attitude on the part of the United States and its effort to defer the adoption of the convention indefinitely.

69. Mr. GOERNER (German Democratic Republic) expressed the hope that the session would see the conclusion of the Conference's work. He wanted to know what the informal meetings of the Second and Third Committees would be discussing. In his delegation's view, only one substantive issue remained: the delimitation of maritime boundaries between countries with opposite or adjacent coasts, and that issue fell within the mandate of the Second Committee. The Second Committee should not be convened, however, until a compromise on that issue that will be acceptable to all parties had been worked out. If at informal meetings participants were going to hear views or positions that had already been rejected, then his delegation was opposed to organizing any meetings at all of the Second and Third Committees.

70. With reference to the statement made by the United States delegation, he regretted to note that agreements that had been negotiated over a long period were being called into question. The draft convention reflected the views of most delegations, including his own. He saw no reason why, on the demand of a single delegation, all results so far reached should be called into question, since his delegation did not regard the assumption of office by a new Government as a case of State succession establishing the right to do so. He accordingly appealed to the United States delegation to reconsider its position in the interest of détente.

71. His delegation shared the view of the Group of 77 that there should be no negotiations on preparatory investment protection, so long as not all delegations were prepared to agree to formalizing the text. Agreement to Part XI by all delegations was an essential prerequisite for consultations on preparatory investment protection.

72. The PRESIDENT said that the intention was to have the plenary Conference, not the Second and Third Committees, consider the recommendations of the Drafting Committee. The Second Committee would not take up the question of the delimitation of maritime boundaries between States with opposite or adjacent coasts.

73. Mr. HAMOUD (Iraq) said that his delegation was in favour of concluding the Conference's work in 1981, in accordance with the agreement reached at Geneva. As he saw it, the points remaining to be resolved included the outer limits of the continental shelf, and of the exclusive economic zone in the case of States with adjacent or opposite coastlines, and the share that the land-locked and disadvantaged States should have in the exploitation of the living resources of the seas, an issue which he regarded as separate from that of the exploitation of the sea-bed.

74. He had been sorry to learn that the United States intended to review the draft convention in its entirety, since that might imply the renegotiation of many points on which agreement had already been reached. The move set a dangerous precedent: changes of course dictated by domestic considerations could ruin the Conference. The United States representative had not managed to justify his country's action: the only possible explanation was a desire on the part of the United States to secure a monopoly in the exploitation of the mineral resources of the sea-bed, thereby depriving the majority of nations of their share of the benefits. The international community must reject such an attempt. All nations should resolve to continue with the Conference in the spirit which had previously prevailed, and conclude the convention during the year.

75. Mr. PASHKEVICH (Byelorussian Soviet Socialist Republic) expressed support for the programme of work proposed by the General Committee. The Conference must be brought to a successful conclusion, establishing the legal rights of all nations using the sea-bed.

76. The current session was supposed to be the last, devoted to preparing the draft convention for signature. Goodwill and a spirit of compromise would be required in the discussions on many issues if the Conference was to stand any chance of success. The course of the negotiations must not, therefore, be influenced by States' internal affairs: he joined in condemning the position adopted by the United States, which could only be viewed as a decision to take a hard line with the international community. The other States participating in the Conference should not tolerate such treatment. The Conference should proceed, forgoing, if necessary, United States participation.

77. Mr. ADIO (Nigeria) said that the programme of work proposed by the President was perfectly acceptable. He agreed fully with the views already expressed on the position taken by the United States Government.

78. For some three or four years, the Conference had had to work under constant pressure from the United States delegation: there had been constant suggestions that United States mining companies were tired of waiting for a convention to be completed, and that the Congress might at any time enact legislation permitting sea-bed mining to begin. Whether or not it was legally permissible for a party to change the climate of negotiations unilaterally, such a move could not but undermine confidence and hamper international co-operation.

79. The claim by the United States delegation that agreements negotiated by it were subject to approval by a higher authority was tantamount to rejecting the process of negotiation. He did not feel, however, that the United States posture rendered negotiations among the remaining members of the Conference meaningless. Even if the United States decided not to sign or ratify it, the Convention, although inevitably weakened, should still be completed. The negotiations had lasted long enough, and time was not on the side of the Conference.

80. Mr. YANKOV (Bulgaria) supported the programme of work for the session recommended by the General Committee, which he regarded as a follow-up to the programme established at the previous session. The new programme was incomplete owing to the peculiar circumstances in which the Conference was operating but, since work was proceeding, he assumed that a definite plan for the remainder of the session would be announced later.

81. The informal text of the draft convention had been drafted in good faith in the course of eight sessions of the Conference, and his delegation had fully expected to see it completed at the current session. No problems remained which could not be solved with an effort of will. He was greatly disquieted, therefore, by the challenge being posed by one State's domestic considerations, which was unjustifiable in the framework of international negotiations. A constitutional change of government should not be the excuse for challenging the results of past negotiation.

82. He had to disagree, moreover, with the United States representative's suggestion that those States which had come to the session prepared to complete the negotiations were guilty of taking the convention lightly. He was dismayed by the fact that that representative had provided no real explanation of his administration's motives for deciding to review the informal negotiating text. No Government, large or small, should discard the product of such important negotiations so lightly.

83. The short-term and arbitrary claims of some deep-sea mining companies should not be allowed to jeopardize the fruits of long deliberations in which the United States had taken part. Credibility and good faith were fundamental tenets

of multilateral diplomacy, especially in the case of such an important effort to codify international law. The United States administration should reconsider its attitude and the Conference should press on, in accordance with its decisions, with the concluding stages of the negotiations. Only the issues referred to in the programme of work should be dealt with, so as to preserve the "package deal" approach and the spirit of compromise which had prevailed throughout the Conference.

84. Mr. TORRAS de la LUZ (Cuba) said that the clarifications provided by the United States representative amounted to no more than a statement of the fact that a new Administration had come to power. That administration's alleged ignorance of the terms of the draft convention hardly tallied with the fact that, at the conclusion of every session of the Conference, the head of the United States delegation had reported to Congress—under both Democratic and Republican administrations—on the progress achieved. Apparently the new Government was simply bent on defending the interests of certain United States mining companies which wanted to be able to exploit the sea-bed without impediment; that was the conclusion to be drawn from its expressed intent to review Part XI of the informal negotiating text. The Group of 77 had already made major concessions to the United States on points which the new Administration claimed were not covered by the draft convention. He was forced to wonder how seriously to take negotiations with the United States Government. There had only been a change of government, after all, not a revolution.

85. He hoped that the debate would encourage the United States to reconsider its attitude and adopt a more responsible approach.

86. Mr. MASANINGA (Zambia) said that his delegation supported the statements made by the representatives of Romania and Zimbabwe to the effect that there were many more issues outstanding than were referred to in document A/CONF.62/110. Such questions as the control and policy of production, stockpile financing, compensation, the exclusive economic zone proposal and the continental shelf required further negotiation. He welcomed the President's statement that the list of outstanding issues was not exhaustive and that delegations would be given an opportunity to undertake negotiations on other issues as well.

87. Mr. TSHIKALA KAKWAKA (Zaire) said that his delegation supported the position of the Group of 77, namely, that the provisions of the draft convention as a whole should not be reconsidered. He supported the programme of work and the recommendations contained in document A/CONF.62/110 on the understanding that the First Committee would consider the question of the control and the policy of production and the other questions on which agreement had not been achieved. Lastly, he stressed the need for flexibility and the will to achieve agreement on the remaining questions through compromise, in order to safeguard the legitimate interests of all States and bring about the speedy adoption of the convention.

88. The PRESIDENT said that, if he heard no objection, he would take it that the Conference adopted the programme of work recommended by the General Committee (A/CONF.62/110).

It was so decided.

89. The PRESIDENT said that he associated himself with members of the Conference in urging the Government of the United States to honour the commitments which it had undertaken and not to prevent the Conference from successfully concluding its work in 1981. He stressed the need to maintain the delicate balance in the package of compromises which had been negotiated at earlier sessions. Any attempt by the delegation of the United States to reopen negotiations on fundamental issues was likely to undo the work of the previous seven years.

Report of the Chairman of the Drafting Committee

90. Mr. BEESLEY (Canada), introducing the report of the Drafting Committee (A/CONF.62/L.67/Rev.1 and 67/Add.1/Rev.1 and Add.2, 3 to 9, 11 and 12), paid a tribute to the important contribution made by the members of the Secretariat and by the co-ordinators and members of the language groups to the work of the Committee. The Drafting Committee had found it desirable to avoid records of discussion of drafting changes and the reasons for them, and he suggested that the Conference should do likewise when considering the report of the Drafting Committee in plenary meetings in order to expedite matters and obviate the need for interpretative statements. He suggested that prior to plenary meetings to discuss the report of the Drafting Committee, delegations should inform the President of any difficulties which they might have with specific recommendations in order to enable him to direct the discussion to the areas of disagreement and avoid a repetition of work done within the Drafting Committee on points with regard to which there were no differences of opinion.

91. With respect to the concordance of the texts in the six official languages, although the Drafting Committee had not always been able to improve linguistic concordance, it had sought to achieve juridical concordance in all cases. The Committee was having consultations with the Chairmen of the Second and Third Committees in order to decide whether the Second Committee texts or the Third Committee text would be considered first and would report back to all delegations when a decision was taken.

92. In conclusion, he said that the Drafting Committee and its constituent organs used informal methods which had proved to be very effective in working with the language groups and co-ordinators. Therefore, when a meeting of the Drafting Committee was listed in the time-table, that did not necessarily mean that the entire Committee would be meeting. The *Journal* would identify which groups were scheduled to meet.

The meeting rose at 7.40 p.m.

146th meeting

Monday, 30 March 1981, at 11 a.m.

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

Tribute to the memory of Mr. Eric Williams, Prime Minister of Trinidad and Tobago

1. The PRESIDENT said that he was grieved to announce the death of Mr. Eric Williams, Prime Minister of Trinidad and Tobago, and expressed condolences to the Government and people of Trinidad and Tobago.

2. Mr. ZULETA, Special Representative of the Secretary-General, Mr. VALENCIA-RODRIGUEZ, chairman of the group of Latin American States, Mr. TUBMAN, chairman of the group of African States, Mr. AL-DAGHMAM, chairman of the group of Asian States, Mr. YOLGA, chairman of the group of Western European and other States, Mr. GOERNER, chairman of the group of Eastern European States, Mr. RATTRAY of Jamaica, Mr. AGUILAR of Venezuela, Mr. SCOTLAND of Guyana, Mr. OXMAN of the United States of America, Mr. POWELL-JONES of the United Kingdom, Mr. ENGO of the United Republic of Cameroon, Mr. de la CHARRIÈRE of France, Mr. MARSIT of Tunis, Mr. ROBLEH of Somalia, Mr. TSHIKALA KAKWAKA of Zaire, Mr. MAZILU of Romania, and Mr. PINTO of Portugal expressed their condolences upon the death of Mr. Eric Williams, Prime Minister of Trinidad and Tobago.

3. Mr. SEALY (Trinidad and Tobago) thanked the President and the members of the Conference on behalf of the Government and people of Trinidad and Tobago for their condolences and assured them that he would convey them to Mr. Williams' family and to the Government.

On the proposal of the President, the representatives observed a minute of silence.

Organization of work

4. The PRESIDENT invited the Conference to consider the proposed programme of work for the period 30 March-13 April 1981. The General Committee had approved, subject to one amendment and a number of clarifications, a provisional time-table submitted on behalf of the Collegium and had recommended that it should be approved by the plenary Conference.

5. The amendment referred to an additional afternoon meeting of the Drafting Committee to be held on Thursday, 2 April.

6. The first of the clarifications referred to was the informal plenary meeting scheduled for the morning of Wednesday, 1 April, in order to enable it to complete its work on the recommendations of the Drafting Committee. Documents A/CONF.62/L.67/Add.1 and Add.2, relating to Third Committee matters, still had to be considered, and that would be done at the proposed informal meeting.

7. The six language groups of the Drafting Committee had still not completed their review of Part XI of the draft convention. On behalf of the Collegium, he appealed to the language groups to accelerate their work, which had been extremely slow, particularly in the case of the English language group. The Drafting Committee would also have to review Part XV, as well as other parts, and the time available during the current session should be well utilized.

8. The programme made provision for two meetings of the working group of 21, under the joint chairmanship of the President and the Chairman of the First Committee, with a view to concluding the discussion on matters relating to the Preparatory Commission. Consultations would subsequently take place between the President and the Chairman in order to adopt the necessary procedures to facilitate consultations and negotiations on the matter.

9. With regard to the delimitation issue, the Chairmen of the two interest groups concerned had requested that time should be allotted for the two groups to hold separate and joint meetings. The Collegium had drawn attention to the fact that the question of delimitation was the only one of the seven hard-core issues still pending and that it was very important to settle it at the current session. He therefore urged the two interest groups concerned to make every effort to find a compromise proposal.

10. The question of participation in the convention had been sufficiently discussed in plenary meetings and the best way to proceed was, therefore, to organize consultations and negotiations in order to reach compromise proposals acceptable to all interest groups. Accordingly, only one informal plenary meeting had been scheduled on that matter, and other meetings on it would be in the form of consultations and negotiations.

11. Two meetings of the First Committee had been planned for the period but if that was not enough additional meetings