

Third United Nations Conference on the Law of the Sea

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A/CONF.62/SR.157

157th Plenary meeting

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the working group of 21 on First Committee matters would be doing in the immediate future.

59. Mr. ENGO (United Republic of Cameroon), speaking as Chairman of the First Committee, said that the Conference had to proceed with its work. The delegations preparing the paper on the treatment of preparatory investments had undertaken not to interrupt the work of the session, but their proposals had not yet been submitted to the Conference.

60. Mr. MARSHALL (United States of America) said that his delegation was aware of the need to proceed quickly. The industrialized States concerned would complete their paper and submit it to the Conference as soon as possible.

61. The PRESIDENT said that a more specific commitment would have been helpful.

62. Mr. THOMPSON-FLORES (Brazil) said that because of the prevailing uncertainties, the working group of 21 could, for the time being, deal only with the question of the Preparatory Commission. The Conference could not remain in suspense: a precise schedule of meetings was essential.

63. The PRESIDENT said that preparation of such a schedule was already under way. If the industrialized States were not ready to submit their paper, the Conference should not waste time but should take up other outstanding matters.

64. Mr. JUNG (Federal Republic of Germany) said that the question of the participation clause also had to be considered.

The meeting rose at 5.40 p.m.

157th meeting

Monday, 29 March 1982, at 11.50 a.m.

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

Organization of work

1. The PRESIDENT said that the purpose of the meeting was to hear reports submitted by the President of the Conference and the Chairmen of the main Committees and of the Drafting Committee; there would be no discussion of those reports at the meeting as envisaged in the programme of work (A/CONF.62/L.116),¹ delegations would be able at meetings to be held later in the week to make statements on the first stage of the session; such statements would be limited to 15 minutes. Some delegations might wish to comment on other matters and would not be ruled out of order if they did so. It had been agreed by the President and Vice-Presidents, however, that delegations would be ruled out of order if they exceeded the 15-minute time-limit. In that connection, it would not be helpful if delegations tried to read lengthy statements hurriedly, as that would provide problems with regard to interpretation. They should instead draft their statements so that they could be read at a reasonable pace within the prescribed time.

Report by the President on the question of participation in the convention

2. The PRESIDENT introduced his report (A/CONF.62/L.86 and Corr.1) and drew attention to a typographical error in paragraph 13 *bis*: the word "not" in the second sentence should be deleted.

Report by the Chairman of the First Committee

3. Mr. ENGO (United Republic of Cameroon), Chairman of the First Committee, said that the programme of work adopted by the Conference (A/CONF.62/L.116) prescribed that the first three weeks of the current session should be dedicated to continuing consultations and negotiations on pending issues. No time and effort had been spared in a collective search for compromises, especially on outstanding issues, to widen still further the existing consensus embodied in the draft convention. The main driving motivation had

been the accommodation of diverse national, regional and global interests in the pursuit of a universally recognized international law of the sea.

4. The First Committee had held two formal meetings, on 9 and 29 March 1982. At the 55th meeting, the Special Representative of the Secretary-General had introduced a preliminary report on the possible impact of the convention, with special reference to article 151, on developing countries which were producers and exporters of minerals to be extracted from the Area (A/CONF.62/L.84). At the request of the delegation of Zambia, the Committee had requested the Secretary-General to prepare an addendum to that preliminary report containing calculations of production ceilings under assumptions provided by the delegation of Zambia. That additional report was reproduced in document A/CONF.62/L.84/Add.1.

5. At the 56th formal meeting the Committee had had before it the report of the Co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30). The working group had held 11 meetings to discuss pending issues, including the Preparatory Commission and the treatment of preparatory investments. He strongly commended the recommendations contained in the report of the Co-ordinators as providing a sufficient basis for widespread support and possible consensus. The proposals sought, first, to meet the concern of the industrialized States for the protection of preparatory investments by existing pioneers in the field. They also provided a favourable response on the issue of direct access to the resources of the Area, which was considered to be of critical importance to the industrialized States and mining companies. The special status accorded to pioneer investors also resolved the nagging problem of an early start to sea-bed mining processes both for mining companies and for the Enterprise. The proposals also cleared the way for orderly access for the Enterprise to finance and technology without the headaches and apprehensions that had arisen in the past.

6. The proposals also provided for dispute settlement by the pioneers themselves with regard to identification of mine sites, thus adopting the central theme of those States which had desired separate agreements in declared apprehension of conflict among them. If the assertions made to the Conference to justify such agreements contained the whole truth, the arrangements proposed under the relevant draft resolution

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

(A/CONF.62/C.1/L.30, annex II), in his view, made an agreement of the kind contemplated unnecessary. The productive results of the Conference's collective endeavours on the subject clearly justified the appeal of the President to the four States concerned not to proceed with signing the agreement before the end of negotiations within the Conference. The draft resolution on the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) had been modified to take account of the functions made imperative by the draft resolution on the treatment of preparatory investments.

7. In his report to the plenary at the end of the tenth session (A/CONF.62/C.1/L.29), he had drawn attention to the grave problems faced by certain developing countries with regard to the production policies contained in the draft convention, especially the fundamental objectives set forth in article 150. He had pointed out, that although a solution might have been found through the provisions of article 151, paragraph 4, the time factor was important inasmuch as those States which were likely to be adversely affected wanted machinery for investigation or study to be in operation before the full impact of sea-bed mining affected their industries. He had suggested that the Preparatory Commission should be involved in such a study and that the States affected should be closely associated both with drafting the terms of such an investigation and in the composition of any study group. He was happy to announce that the negotiations had produced a proposal to the effect that the Preparatory Commission should be entrusted with the responsibilities in question.

8. It had also been proposed (WG.21/Informal Paper 23) by the Group of 77 that article 163, paragraph 4, should have the following additional sentence: "Members of the Economic Planning Commission shall include at least two representatives from the developing land-based producers". Since that proposal related to the main body of the draft convention, he would recommend its consideration with a view to assessing how widespread support for it was.

9. The delegations of Zambia, Zaire, Zimbabwe and Gabon did not consider those proposals to be sufficient. They had drawn attention to the lack of a necessary link between the recommendations of the Preparatory Commission and a specific duty on the part of the Authority itself in that respect. Their preference was for provision to be made in the body of the draft convention for the Authority to set up a compensation fund based on the recommendations of the Preparatory Commission, the most appropriate place for the new provision being in article 151, paragraph 4, or under the powers and functions of the Assembly in article 160. It had not been possible to obtain consensus on that issue, and he was accordingly submitting that aspect for the judgement of the plenary.

10. With regard to unfair economic practices, he said that the Australian delegation had announced that that issue was still the subject of continuing consultations and consequently the working group of 21 had not dealt with it comprehensively.

11. The issue of the composition of the Council had been brought before the working group of 21 by a group of less industrialized countries. The group had considered an informal proposal (WG.21/Informal Paper 19) sponsored by Austria, Finland, Greece, Portugal, Spain, Sweden, Switzerland and Turkey, calling for the addition of one member from a developing country under category (d) for a total of seven members under that category and for the addition of one member under category (e) for a total of 19 members under that category, with Eastern Europe having at least one and other geographical regions at least two members elected under the latter category. The sponsors had argued that the proposal would give more adequate representation to the countries concerned and maintain a fair overall equitable geographical distribution of seats. There had been no consensus on that issue, although much sympathy had been expressed

for the plight of those concerned. The matter was not merely one of numbers; it had to be considered in the light of the balance in article 161, paragraph 1 and of the consequences of the Council's voting system, as described in paragraph 7 of that article. Another alternative might be to increase the size of the Council of 48, but that had often been rejected for reasons of efficiency.

12. Before concluding, he believed that it was imperative to review the chronology of the return of the United States to the negotiations in order to make an objective appraisal of the situation prevailing at the Conference. Shortly after taking office, the new United States Administration had decided to undertake a comprehensive review of the draft convention. Consequently, throughout 1981 that nation's delegation, on instructions, had not participated in the negotiations. It had informed the Conference at the resumed tenth session that, as part of its continuing review of the draft convention, it was attending that session solely in order to consult the membership on perspectives developing in Washington which had been adverse to the provisions contained in the informal composite negotiating text (A/CONF.62/WP.10/Rev.3 and Corr.1 and 3). The purpose had been, according to the United States representative, to test the negotiability of those perspectives.

13. It was important to note that those requests had been addressed to a Conference that had decided on a winding-up programme for its work with a view to adopting a universal convention at the following session, and that the United States delegation at the ninth session had declared its firm determination to oppose any changes in the informal text of the draft convention. An already protracted Conference had, however, further stretched its patience and understanding in an unprecedented manner by virtually suspending serious negotiations during the tenth session.

14. A full hearing had then been given to the United States delegation. The perspectives presented had clearly shown that the same old proposals that the Conference had received from the United States at the first working session at Caracas were being revived, as if nothing had happened since in the negotiating process. At the end of the resumed tenth session, the United States delegation had returned to Washington expressing satisfaction with that hearing. The rest of the Conference had shared in the conviction that that delegation had left Geneva with tremendous, detailed knowledge of the reactions of other delegations. They had been assured by the United States that those reactions would be taken fully into account in that country's review process.

15. On 29 January 1982 President Reagan had announced publicly that his nation was returning to the negotiations determined to work with other nations at the Conference "to achieve an acceptable treaty". The review had been completed, and the President, looking ahead, had declared that the United States was committed "to the multilateral treaty process for reaching agreement on the law of the sea". The news had received the welcome it deserved: Mr. Malone's impression from his Conference contacts had been that there had been "widespread appreciation of the President's commitment to the multilateral treaty process".

16. That commitment had been considered by most to be overriding. The President's declaration had encouraged the Conference leadership, and participating member nations, to conclude that the six broad topics that the President had characterized as containing "unacceptable elements" would be introduced to the Conference in a manner reflecting full cognizance of the results of the frank exchange of views with delegations at Geneva.

17. Two interpretations could have been placed on the United States President's conditions for supporting the convention: one, that it was an ultimatum, setting out hard

inflexible terms touching on substantive issues, all of which needed to be satisfied by the Conference as a price for United States participation, or, two, that it was an appeal for understanding, suggesting many adjustments to the draft convention within the parameters of the existing packages recognized in it. The President of the Conference and he, as Chairman of the First Committee, had remained faithful optimists in presuming the latter interpretation.

18. On 24 February 1982, the United States delegation had circulated a 43-page document entitled "Approaches to Major Problems in Part XI of the draft convention on the law of the sea". Its stated purpose was to try to explain the problems the United States had indentified with Part XI, to apprise other delegations of the range of solutions the United States had reviewed and, primarily, to elicit the advice and suggestions of others as to how best to solve those problems in the interests of developing a universally acceptable convention. It had been explained that the United States was "anxious to be as flexible as possible consistent with the fulfilment of President Reagan's objectives". The document had listed problems under eight headings, namely, decision-making, review conference, access system, technology transfer, production limitations and policies, the Enterprise, national liberation issues and what had been called "Grandfather right". It had been stated that the United States, in introducing that document, would solicit and welcome the view of other delegations in order to enable it better to refine and narrow its proposals for change to Part XI. Delegations had been assured that the United States did not wish to delay the work of the Conference and was encouraging speedy and conclusive negotiations.

19. As a result of consultations by which it had obtained other delegations' views, the United States delegation had submitted to a specially convened informal meeting of the First Committee on 10 March a document (WG.21/Informal Paper 18) generally referred to as "the Green Book". It contained a multiplicity of sweeping amendments touching all sections of Part XI and annexes II and III. It had been the general view of the Conference that the document called into question all substantive matters in Part XI, showing no visible evidence of the results of consultations with delegations to date. A second informal meeting of the First Committee, held on 12 March 1982, had publicly confirmed the reactions of delegations, which had already been liberally and frankly given in private to the United States delegation. Apart from varying degrees of solidarity expressed by some industrialized countries, all the other interest groups represented, including many Western countries, had expressed the view that the "Green Book" could not possibly provide a good basis for negotiations.

20. The question had been raised again whether the release of the contents of the "Green Book" had not been an indication that the United States indeed wanted to delay the work of the Conference for many years to come. It had become increasingly difficult to allay fears concerning the scope of the United States' commitment to the treaty process. Speaking on 11 March 1982 at an informal meeting of the First Committee, Mr. Leigh Ratiner, an experienced United States representative, had attempted to reassure the Conference by stating that at no time had it been the wish of the United States to delay the work of the Conference; if anything, he had stated, the reverse was true.

21. It had become impossible to arrange for negotiations between all sides in the face of the gulf between the spoken assurances and the nature of the substantive amendments. The co-chairmen of the working group of 21 had explored every possible avenue for some basis for negotiation on the United States concerns, in spite of the fact that they had not been specifically categorized in the programme of work adopted by the Conference as being among outstanding issues. Opposing sides and all interest groups had been

brought together in private consultations, but in vain. The inflexibility of the United States position had provoked inflexibility elsewhere.

22. In the resulting hiatus, a group of heads of delegations from 11 developed countries of the West, acting in their personal capacities and encouraged by the President of the Conference and the Chairman of the First Committee, had voluntarily undertaken to develop a set of proposals (WG.21/Informal Paper 21 and Add.1) which, they had hoped, might bridge the gap between the position of the United States and some of the other potential Western seabed miners, on the one hand, and the Group of 77 and those who shared their concerns, on the other. In preparing their suggestions, those heads of delegations, who were being referred to as the group of 11, had studied President Reagan's statement of 29 January 1982. They had sought means by which the problems outlined in that statement might be resolved or at least alleviated without upsetting the balance of a draft convention painstakingly negotiated over eight years. The central motivation of the group of 11 had clearly been to foster progress towards consensus on all issues. They had made a number of proposals to the President of the Conference and to the Chairman of the First Committee.

23. Although the proposals addressed the broad critical aspects of President Reagan's stated concerns, the United States delegation, supported—perhaps with varying degrees of enthusiasm—by those of the other four Western industrialized States, had not been in a position to accept the proposals as a basis for further negotiations on the ground that the list of subjects dealt with was exhaustive. The United States delegation had stressed that point in private consultations with the Group of 77, the group of Eastern European States, China and the group of 11, all of which had been invited to attend.

24. The Group of 77 and others later rejected the proposals as a basis for further negotiations because of what they unfortunately saw as a rejection by the industrialized States. In any case, they felt that the issues in the "Green Book" which had not been addressed by the group of 11 were not negotiable and that they had repeatedly explained the reasons for that to United States delegations during the past year. In fact, they would consider agreement to re-examine the issues raised in the proposals of the group of 11 a great concession.

25. An appeal from the co-chairman of the working group of 21 had been considered by both sides, but with no constructive results. He felt bound to share the content of the proposals with the entire membership of the Conference and with any interested segment of the international public because of his personal conviction—shared, he believed, by the President of the Conference—that they truly offered prospects of securing and furthering widespread agreement. For that reason alone, they should not be lost.

26. The first objective enumerated by President Reagan had been that the convention should not deter the development of any deep sea-bed mineral resources to meet national and world demand. The group of 11 had proposed amendments to article 150 and article 17 of annex III which, in its view might make clear the purpose of the convention in that respect. The amendments had addressed the production policies, mindful of the view, maintained by some, that the policies enumerated in article 150 seemed to state unnecessary qualifications to a principle that remained implicit. The logical course was, therefore, to begin the list with a clear and unambiguous expression of that principle. The group had thus proposed that article 150 should begin with a statement that activities in the Area should be carried out with a view to ensuring development of the resources of the Area.

27. The second suggestion based on President Reagan's objective concerned article 155. Rather than leaving the review conference completely free to establish its own rules of procedure and thus condemning it to begin with time-

consuming and confidence-destroying debates, it had been proposed that the convention itself should direct the review conference to apply to its decision-making the rules of procedure of the Third United Nations Conference on the Law of the Sea, especially those rules that enjoined the search for consensus and the prohibition against voting until all efforts to achieve consensus had been exhausted. That suggestion envisaged further review and careful evaluation of the parallel system, as part of the review process, and was designed to allay the apprehensions of those who would eventually find themselves unable to ratify the amendments emerging from the review conference. Accordingly, it had been proposed that the provision that States should be bound by amendments, even if they had not accepted them, should be deleted. It had been suggested that efforts should be made to adopt amendments by consensus, the proposals being designed to indicate that the effectiveness and viability of the parallel system would be a likely factor in considering changes in the system of exploration and exploitation.

28. A third suggestion had addressed a major political concern of the United States, namely, an assured seat on the Council. While consistent in principle with the general rejection of the Security Council system of permanent seats for specific countries, the proposal would provide, through an amendment to article 161, a seat on the Council for the world's largest consumer of sea-bed minerals, which was clearly the United States, an approach to which there had been no serious opposition.

29. Another part of the same proposal would clarify, by actually specifying the number of States likely to be elected in each geographical group contemplated in article 161 (1) (e), what, in the opinion of the Conference, would amount to "equitable geographical distribution of seats".

30. A proposal relating to articles 158 and 160 sought to clarify further the principle of the separation of the powers of each of the Authority's principal organs. It had been designed to allay the apprehensions of those States, especially the United States, which felt that the unqualified supremacy of the Assembly might at times interfere with the efficient management of the Authority's operations.

31. The object of another proposal was to make a fine adjustment to the balanced scheme for decision-making in the Council by requiring that decisions on the budget of the Authority should be adopted not by a three-fourths majority but by a majority of three fourths plus one.

32. Other proposals addressed the apprehensions felt by the United States and some industrialized countries concerning the basic conditions for prospecting, exploration and exploitation set out in annex III to the convention. Some, such as those relating to article 1 and to paragraphs 1 and 4 (b) of article 3, sought to clarify, through drafting changes, ideas that had already been accepted, and to that extent should not necessarily form an element in the negotiations on substance. They also had the effect of laying the foundation for the introduction of objective criteria for determining the qualification standards referred to in article 4 of annex III.

33. There was also a proposed new provision (art. 4 *bis* of annex III) for certification by sponsoring States of the qualification standards of applicants. Those proposals, together with proposed changes in the first three paragraphs of article 6 of annex III specifying a procedure for the Legal and Technical Commission in its initial consideration of plans of work, sought to streamline the system for approval of plans of work.

34. In response to United States concerns with regard to transfer of technology, several changes were proposed with respect to article 5 of annex III. They fell roughly into three categories. First, the inclusion of a new provision which would require a contractor to undertake a general obligation to cooperate with the Authority in its efforts to acquire technology

on fair and reasonable commercial terms and conditions; secondly, certain adjustments in paragraphs 3 and 4 of article 5 which were intended to make the contractors' technology transfer obligations somewhat less stringent and onerous by substituting an element of consent in what appeared to them a wholly mandatory, and thus commercially unrealistic and legally unworkable, provision; and thirdly, revision of paragraph 5 of article 5 which would make more precise the obligations of all States, and especially sponsoring States, with regard to ensuring the commercial viability of the Enterprise.

35. Finally, in connection with what appeared to some to be a lacuna in the basic conditions—which mentioned but did not lay emphasis upon resources of the Area other than polymetallic nodules—there was a proposal that would require the Authority, under article 17 of annex III, to adopt rules, regulations and procedures concerning the exploration and exploitation of those resources.

36. He appreciated that without the benefit of careful study of the wording of those proposals a considered response to them would be difficult. Nevertheless, any guidance members of the Conference might wish to offer concerning the general direction or specific content of any one of them would be most welcome. Without underestimating the importance the United States attached to other questions on their list of concerns, he suggested that the additional protection and guarantees it sought in the convention would be substantially, if not adequately provided by the results of negotiations based on those proposals, especially bearing in mind proposals that the President of the Conference and he had made regarding the Preparatory Commission and the treatment of preliminary investments by pioneers in the field.

37. At that critical final phase which preceded momentous decisions, if the sincere and indispensable commitment to the treaty process still prevailed, all sides would have to consider seriously the size of the price to be paid for a desirable, universally recognized treaty. Subjectivity should not predominate in the deliberations because all were surely aware that it was only under international law and stability that individual nations could expect to enjoy lasting peace and progress.

38. He fully understood that for the Group of 77, consisting of more than 115 developing countries with varying levels of development and needs, one more appeal to abandon positions painfully accepted in the sometimes idealistic or religious pursuit of compromise, was a hard one. In appealing equally to them, and to the socialist group, the land-based producers and others, he asked no more than that their ideal of a universal convention should not be tempered by the threat that some would not at first feel able to subscribe to it. While members should continue to reject negotiating in fear, they should not hesitate to contemplate proposed adjustments which did not adversely or seriously affect the substance of existing packages in the draft convention.

39. For the Western industrialized States, there was a fundamental duty to understand the nature and full impact of the price they too had to pay for a successful universal treaty. They also had the additional moral obligation at the Conference to take stock of what others might or might not have gained in the long process of seeking to protect or provide guarantees for their vital needs and interests. No single nation, no matter how powerful, negotiating at so complex a Conference should entertain the illusion that it could emerge with all its demands fully satisfied without trampling upon the interests of many others.

40. He invited the United Kingdom, France, Japan, the Federal Republic of Germany and the United States to come with the rest of the world all the way back to Caracas and beyond. There could be no better assurances for those countries' companies or national enterprises than in the context of the arrangements contained in the draft convention and other

proposals before the Conference. Special arrangements, fostered by fleeting solidarity in a selfish sectional course, were as legally reprehensible as they were plagued with commercial risks. No one had sought to isolate those States: on the contrary, their declared interests and needs had been central to the negotiations. None of them could afford to turn their backs on provisions they had worked out and on which they had joined in consensus with other nations.

41. For ocean space, the Conference had sought to unite all nations' strengths by consciously creating conditions of international peace and security through universal law—international law made in the full glare of diversities of interests and of economic and social systems. The Conference had attempted to respond to a desperate need for harmonization of the aspirations, interests and needs of each people, each nation and each geographical region.

42. The results had so far met the critical concerns of the industrialized countries, including legal ocean mobility, access to the critical minerals needed for development and security, guarantees that their minority voice or voices would not be unfairly silenced by the rest of a divided world; that they would be represented in all organs and in all activities; that investments made even before and outside the convention would be protected. The list was long.

43. The oceans might well be man's last outpost before disaster. The convention that the Conference was about to adopt must be an instrument of justice for all and a source of new forms of co-operation for harnessing energies in a process of development. All must co-operate in every sphere of international life in bringing peace to regions of conflict unless all were to be condemned to annihilation by global war.

44. Although the formal negotiating phase of the programme had ended, the President of the Conference and he did not consider the door closed on further efforts to secure consensus. He appealed to all delegations to join with them in a crusade to reach agreements that would widen the scope of the consensus already attained.

45. Lastly, he appealed to members of the press, in reporting about the Conference's historic endeavours, to be mindful that public opinion must be based on verifiable facts and correct information. The difference between fact, on the one side, and comment or the opinion of a few journalists, on the other, should be made clear in all reporting.

46. Many members of the press had shown restraint and ethical balance, but there were a few who still appeared to seek fame through the abuse of sacred power and responsibility. It was to them that his final appeal was addressed.

47. There were always those who, for one reason or another, must decry the creation of new international institutions, but the course of history could be changed. It was better to herald a new era of international action and explain to the public the adjustments that new challenges must bring than to slumber through a revolution.

Report by the Chairman of the Second Committee

48. Mr. AGUILAR (Venezuela), Chairman of the Second Committee, said that during the first stage of the eleventh session of the Conference, the Second Committee had held three informal meetings. He had heard beforehand the opinions of all delegations that had expressed an interest in holding them and, in general, of all those that had requested consultations with him to specify the purpose and scope of the meetings. As a result of those consultations, he had reached the conclusion that it would be preferable to give broad latitude to all delegations to raise any issue or question within the competence of the Second Committee and to make informal suggestions for amendments. Accordingly, the meetings had been held without an agenda and without a pre-established order for the submission and discussion of suggestions or proposals for

amendment. He had deemed it necessary, however, to state at the start that after negotiations over so many years it would not be desirable to reopen fundamental questions and thus disturb the balance achieved through generally accepted solutions of compromise. He had consequently recommended that efforts should be concentrated on the submission and discussion of those proposals which were intended to clarify, make specific or improve the draft convention. All participants had had ample opportunity to express their points of view. In all, there had been 105 statements.

49. In the course of the meetings 10 informal suggestions had been submitted for the consideration of the Committee, namely: that of the United Kingdom concerning article 60, paragraph 3 (C.2/Informal Meeting/66); those of the Federal Republic of Germany concerning article 19, paragraph 2 (I), article 23, last sentence and article 125 at the beginning of paragraph 2 (C.2/Informal Meeting/69); those of Peru concerning articles 15 and 56 and the rearrangement of articles in Part VII, Section 1 (High seas) (C.2/Informal Meeting/67); that of Turkey concerning article 123, chapeau, (C.2/Informal Meeting/71); that of Romania and Yugoslavia concerning article 62, paragraph 3 (C.2/Informal Meeting/70); that of China concerning article 76, paragraphs 1 and 3 (C.2/Informal Meeting/72); that of Argentina, Cape Verde, China, Congo, Democratic People's Republic of Korea, Djibouti, Ecuador, Egypt, Iran, Libyan Arab Jamahiriya, Malta, Morocco, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Romania, Sao Tome and Principe, Somalia, Sudan, Suriname, United Republic of Cameroon, Uruguay and Zaire concerning article 21 (C.2/Informal Meeting/58/Rev.1). Virtually all of those suggestions had been submitted and considered at previous sessions, although some of them had been reformulated in the light of comments and observations from other delegations.

50. From the discussions at the three informal meetings, the only proposal which met the requirements established in document A/CONF.62/62² was that submitted by the United Kingdom concerning article 60, paragraph 3. Some proposals, however, had been submitted at the second and third meetings and some participating delegations might not have had an opportunity to express an opinion on them. Moreover, the proponents of the informal suggestion concerning article 63, paragraph 2, had indicated that they were actively continuing consultations with a view to achieving a generally acceptable formulation and that a number of delegations had expressed interest in the question. The suggestions of the delegation of Peru (C.2/Informal Meeting/68) concerning certain drafting changes and the rearrangement of some articles of Parts VII and VIII of the draft convention had been referred to a small working group which had held two meetings on 26 March. The representative of Switzerland, who had been elected to preside over that group, had informed him that it had not been possible to reach a consensus on the suggestions.

51. Finally, he had taken the initiative of convening two consultation meetings to consider specifically the question of innocent passage of warships through the territorial sea, a matter which was referred to in the informal proposal of a number of delegations concerning article 21 of the draft convention. Meetings and consultations held individually with the delegations most concerned had not so far produced any formula which was acceptable to the proponents of the informal proposal and to those who regarded it as neither necessary nor worthwhile to introduce modifications in that or other articles concerning that delicate question.

52. On the other hand those discussions had indicated that there was real consensus on the need to preserve the fundamental elements of the parts of the convention which were within the competence of the Second Committee and that, except for very few issues, the current text of those parts of

² *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

the draft convention constituted a satisfactory solution of compromise. That did not exclude the possibility that in the forthcoming stages of the Conference changes might be introduced which could contribute to facilitating the adoption of the convention by the greatest possible number of participating States.

Report by the Chairman of the Third Committee

53. Mr. YANKOV (Bulgaria), Chairman of the Third Committee, reported that the Third Committee had held no meetings during the current session, since its substantive negotiations on Parts XII, XIII and XIV of the draft convention had been completed at the tenth session. It had, however, examined the recommendations of the Drafting Committee relating to specific articles which fell within its purview. A list of drafting changes relating to Parts XII and XIII of the draft convention which should be incorporated in any future version of the draft convention was contained in document A/CONF.62/L.88. Some of those changes—those relating to articles 194, 196, 201 and 244—reflected the recommendations of the Drafting Committee, while others—those relating to articles 204, 207, 209 to 214, 216, 217, 222, 226 and 242—reflected amendments he had proposed to the recommendations of the Drafting Committee with a view to achieving the necessary harmony and uniformity in the text.

54. With the same end in view, he was likewise recommending that the phrase “protection and preservation of the marine environment” should be used instead of the phrase “protection of the marine environment” whenever the question was referred to in the relevant provisions of Part XI (arts. 145, 155, 165) and annex III (arts. 2, 13, 14 and 17).

55. With regard to the drafting changes to be made in article 212, paragraph 1, and article 216, paragraph 1 (b), the Third Committee had determined that the phrase “vessels flying their flag or vessels or aircraft of their registry” was preferable in both cases to the original formulation, which did not properly cover the status of aircraft according to the Chicago Convention on International Civil Aviation,³ of 7 December 1944, since aircraft did not fly a flag. Consultations with experts, including the legal department of the Inter-Governmental Maritime Consultative Organization (IMCO), had indicated that even with regard to vessels the criterion of nationality—the flying of a flag—was not sufficient in all instances, and the new formulation took that, too, into account.

56. Again out of concern for the uniformity of all parts of the draft Convention, he felt bound to point out that the word “ship” was used in English in the parts that fell within the terms of reference of the Second Committee, whereas the word “vessel” was used in Parts XII and XIII because the Third Committee had considered, after consultation with legal experts, that the broader term “vessels” was more appropriate in English, since it covered all floating structures whose use or operation might cause pollution of the marine environment and since it was the term used in all multilateral international treaties on the protection and preservation of the marine environment, especially those under the sponsorship of IMCO. Those and other matters of a drafting nature should be discussed among the various committees in due course.

Reports by the Chairman of the Drafting Committee

57. Mr. BEESLEY (Canada), Chairman of the Drafting Committee, reported that he had submitted the recommendations of the Drafting Committee, on behalf of the President

and the Chairman of the First Committee, at two informal meetings of the plenary held on 12 and 15 March 1982, as indicated in document A/CONF.62/L.90. The recommendations related to articles 147 to 185 in Part XI of the draft convention, and those which had been approved at those meetings of the plenary were set out in the addenda to the report of the Drafting Committee (A/CONF.62/L.85/Add.1-8), as amended by document A/CONF.62/L.85/Add.9. Together they comprised approximately 1,100 recommendations out of a total of 1,500 to date for the draft convention as a whole and obviously represented a tremendous amount of work.

58. Reporting on the work of the Drafting Committee itself during the eleventh session, he said that, as indicated in document A/CONF.62/L.89, the Committee had during the first stage of the session (8-26 March) continued its article-by-article textual review of the draft convention. There had been 61 meetings of the language groups, 3 meetings of the co-ordinators of the language groups under his chairmanship and 1 meeting of the Drafting Committee.

59. The language groups had worked intensively on annexes III and IV, whose provisions presented particular difficulties since they were detailed, complex and technical. In reviewing those provisions, the Drafting Committee had to make choices between terms such as “areas” and “sites”, “plans of work” and “contracts”, “operator” and “contractor”—all of which had potential substantive implications, both technical and legal. Unfortunately, the absence, from the Drafting Committee of many of the representatives who had participated in the negotiations of those articles had impeded the Committee’s progress.

60. A further difficulty was that the Drafting Committee was being requested to hasten the pace of its work at a time when it was reviewing some of the most novel, technical and complex provisions of the draft convention. As early as 1976, at the fourth session of the Conference, he, as Chairman of the Drafting Committee, had expressed the hope that every effort would be made to avoid referring drafting problems to the Committee at the last moment under great pressure, since the Committee should not be asked to accomplish its work hurriedly, yet that was exactly what had occurred. If such a regrettable state of affairs continued, the result would be a flawed convention containing inconsistencies, omissions and contradictions.

61. He was recommending that the Drafting Committee should concentrate during the second stage of the session (29 March-1 April) on the early completion of its work on annexes III, IV, VI, VII and VIII, Parts XVI and XVII, the preamble, article 1 and the transitional provision, followed by the necessary meetings of the co-ordinators of the language groups and the Drafting Committee.

62. It should be noted that, pursuant to the decision (A/CONF.62/116)¹ already taken by the Conference on 28 August 1981, the plenary was required to process the Drafting Committee’s report by 12 April. That would clearly require further intensive work by the Drafting Committee under severe time constraints. He therefore asked for the co-operation of all concerned, and not only of the faithful few who had been regularly attending the meetings of the Drafting Committee.

Tribute to the memory of Mr. Indalecio Liévano, former President of the General Assembly

On the proposal of the President, the members of the Conference observed a minute of silence in tribute to the memory of Mr. Indalecio Liévano, former President of the General Assembly and former member of the delegation of Colombia to the Conference.

³ United Nations, *Treaty Series*, vol. 15, No. 102, p. 295.