

# **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/SR.159**

## **159<sup>th</sup> Plenary meeting**

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

Group of 77; rather they marked an extraordinary concession on the part of the Group, to offer a measure of protection to those States or entities which had made substantial investments in pioneer activities in deep sea-bed mining. It was particularly significant that the proposals made all rights conditional upon ratification of the convention, and that they confined activities to those of exploration, restricted pioneer areas to one per applicant, provided for mechanisms for the resolution of conflicts, and above all sought to preserve the parallel system by ensuring that the Enterprise would have reserve areas and would develop in such a way as to enable it to enter into activities at the same time as States and entities.

18. The Group of 77 had made great concessions, and it was time for other parties to recognize that the search for consensus would be mythical unless all were prepared to do so. It was important to have a convention as the only legitimate expression of a régime that would govern the ocean space and would go beyond the limit of national jurisdictions, in keeping with the Declaration of Principles.<sup>3</sup> No system outside a convention could represent a legitimate scheme under which the

<sup>3</sup> Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV)).

deep sea-bed could be explored and exploited. It was as important to achieve a convention at the end of the session as it was to pursue the quest for consensus. The proposals contained in document A/CONF.62/C.1/L.30 offered improved prospects for achieving that goal, and a strict adherence to the Conference timetable would further it.

19. The convention was important to humanity; it was urgent to respond to the cry of all countries for an orderly régime governing the oceans. For that reason Jamaica had set aside \$50 million to provide a home for the new International Sea-Bed Authority and Preparatory Commission. It had done so out of the conviction that it was a historic venture and that it was in the interest of all countries to find accommodation within the convention. Jamaica would spare no efforts to bring the Conference to a successful conclusion.

20. Mr. WYLE (Observer for the Trust Territory of the Pacific Isles) said, with reference to the report of the President in document A/CONF.62/L.86, that his delegation was one of those most immediately affected by article 305 of the draft convention. In view of the importance of maintaining the delicate balance of the package, he fully supported the President's proposal on article 305, particularly regarding paragraph 1 (b), (c) and (d).

*The meeting rose at 11.30 a.m.*

## 159th meeting

Tuesday, 30 March 1982, at 3.10 p.m.

*President: Mr. I. UL-HAQUE (Pakistan)*

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

1. Mr. de SOTO (Peru), speaking as Chairman of the Group of 77, said that he wished to add to the proposals that he had made on the Group's behalf at the previous meeting with regard to the draft resolution contained in annex I to document A/CONF.62/C.1/L.30. The Group wished to establish a link between the convention and paragraph 5 (i) of the draft resolution in order to show where the Preparatory Commission's recommendations on the compensation fund mentioned in that paragraph would appear in the convention. The Group therefore proposed that the following subparagraph should be added at the end of article 171 of the draft convention (Funds of the Authority):

“(f) payments to a compensation fund in terms of article 151, paragraph 4, whose sources are to be devised by the Economic Planning Commission”.

2. With regard to the question of participation in the convention, the Group was profoundly grateful for the President's intensive efforts to reconcile different positions. The Group believed that questions of participation were directly relevant to the viability of the convention itself and that all elements of the “mini-package” on participation proposed in document A/CONF.62/L.86 must be resolved jointly, without prejudice to questions of principle or to the Group's substantive positions on individual elements which might be easier to accept separately than as part of the pack-

age. The President's package provided a framework for resolving all problems of participation, but there was still considerable room for improvement, particularly with regard to the question of participation by national liberation movements (annex II) and the substance and form of the Transitional Provision (annex III), if the package was to receive the necessary universal and final approval.

3. Mr. NANDAN (Fiji) expressed satisfaction that draft compromise texts had been prepared on the three outstanding issues of participation in the convention, the establishment of the Preparatory Commission and protection of preparatory investments.

4. With regard to participation, it was always difficult to establish the rights and duties of participants in a convention, especially participants that were not sovereign States. Several entities had sought to participate in the Convention in one way or another, and the proposals put forward in document A/CONF.62/L.86 in that connection should be universally acceptable. He was gratified at the proposal (annex I) to include in article 305 provisions which would permit full participation by several South Pacific self-governing associated States which exercised full jurisdiction over their maritime zones and had full competence in matters governed by the convention. Such States would include the Cook Islands and Niue and the Trust Territory of the Pacific Islands. Satisfactory solutions had also been proposed with regard to the participation of national liberation movements and entities such as the European Economic Community, and he hoped that they would meet with general approval.

5. The draft resolution on the establishment of the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) reflected a universally acceptable compromise and greatly enhanced the prospects for a consensus. It could be improved upon, however, and he hoped that the Collegium would take account of delegations' comments in that connection, especially those made on behalf of the Group of 77.

6. The draft resolution on the protection of preparatory investments (*ibid*, annex II) should enable all potential investors to proceed in the knowledge that their efforts would be recognized by a contract approved by the future Authority. Such investors would also be integrated into the scheme envisaged in Part XI of the convention. To his mind, the draft resolution was a very fair compromise which he hoped would be improved upon further in order to achieve the broadest possible consensus.

7. With regard to the future work programme of the Conference, he wished to pledge his support to the President and the Bureau in their efforts to abide by the programme adopted for the session (A/CONF.62/116)<sup>1</sup> and to ensure that the session concluded with the adoption of the long-awaited convention.

8. The work of the conference had been set back by a year so that the United States delegation might review the text of the draft convention. That delegation had now proposed far-reaching changes to the draft which failed to recognize the years of arduous work and compromise on the part of all delegations, including that of the United States, which had gone into its preparation. The Conference could hardly be expected to suddenly change course after 10 years of work, and he regretted that the unrealistic demands made by the United States and certain other industrialized countries had prevented any meaningful negotiations between them and the other participants in the Conference. He therefore endorsed the appeal that, prior to the adoption of the convention, some further effort should be made to find a compromise permitting its adoption by consensus. That would of course be possible only if the United States and its allies scaled down their demands to something that was realistically negotiable, i.e., that did not depart from the basic framework of the convention and was without prejudice to the interests of other States such as the land-based producers. If they made that gesture, his delegation would be willing to encourage negotiations in good faith with a view to achieving a compromise.

9. Mr. MOMTAZ (Iran) observed that the various reports now before the Conference often reflected the atmosphere that had prevailed over the past three weeks. He regretted to note that, after blocking the Conference's work for some considerable time, one delegation had now presented an avalanche of proposals which seriously threatened the results achieved over the past few years while rejecting outright any new proposals which might threaten the interests of the great Powers. Such a situation was unacceptable. All proposals deserved the same careful treatment, regardless of the real or imagined importance of their authors.

10. The various proposals now before the Conference still created some problems for his delegation, even though in some cases they reflected the views of the Group of 77 and therefore represented progress over earlier texts. For instance, his delegation was concerned at the treatment of preparatory investments proposed in annex II of document A/CONF.62/C.1/L.30. While his delegation was aware of the importance of research and exploration work for the rapid and rational exploitation of the common heritage of mankind, it was not entirely convinced that the investments made by the most developed countries would ultimately benefit all mankind, and hence the Enterprise, and must therefore be pro-

ected. When it had agreed to discuss that issue, it had done so in the belief that the guiding principle must be the protection of the common heritage of mankind. In the draft resolution proposed in annex II, however, protection of the industrialized countries' investments often seemed to have prevailed over the need to protect that heritage. Moreover, by choosing 1 January 1983 as the cut-off date for determining who constituted pioneer investors, the resolution seemed to deliberately exclude entities which had not been able to be among the first to make such investments. The criteria used to delimit the pioneer area also did not appear to be very objective and seemed to be geared above all to the interests of pioneer investors. The same was true of the automatic approval of exploration contracts by the Authority once the convention entered into force. Finally, the obligations set forth in paragraph 12 were extremely vague and must be specified in greater detail.

11. He was somewhat disappointed at the President's proposals with regard to participation in the convention by national liberation movements (A/CONF.62/L.86, annex I). The Constitution of Iran pledged full support to such movements, and his country believed that their full participation in both the convention and the Conference would have been their best guarantee. To allow them to sign only the final act and not the convention went against their interests. The 1977 Additional Protocols<sup>2</sup> to the 1949 Geneva Conventions for the protection of victims of armed conflicts could hardly be cited as a precedent to justify such an approach, for the instruments involved were very different. The Convention was to govern the common heritage of mankind, the resources of which belonged to all mankind, including peoples under foreign and colonial domination as represented internationally by their national liberation movements. The privileges of those movements in the different organs established by the convention must be strengthened so that they could defend their rights and interests, in particular their right to file suit and, if necessary, appear before the Tribunal, and their right to participate in all the deliberations of the organs of the Authority.

12. With regard to the obligations arising from the resolutions which the Conference would have to adopt at the end of its work, he greatly feared that there were few guarantees to the international community that those obligations would be fulfilled promptly and effectively.

13. Concerning the report by the Chairman of the Second Committee (A.CONF.62/L.87), he noted that no progress had been made on the crucial question of the passage of warships through the territorial sea. A fairly large number of delegations were still demanding that article 21 be reformulated to bring it into line with their domestic legislation. Many countries, including his own, made the passage of warships subject to prior authorization or notification, and Iran could not allow the war fleets of the great Powers access to its territorial sea unsupervised and without prior authorization. The new formulation proposed for article 21 would adapt the convention to the practice of many countries and would simply include in the convention a well-established rule of customary international law.

14. His delegation could not support the definition of islands given in the draft convention. That definition was inequitable, for any distinction among islands could lead to disputes and serious problems in the future. The same was true of the rights accorded to land-locked countries. The principle of reciprocity in matters of transit was a well-established custom already enunciated in the convention on Transit-Trade of Land-Locked States, done at New York, 1965.<sup>3</sup>

15. He hoped that the changes he had suggested would be incorporated in the draft convention in coming weeks.

<sup>1</sup> 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).

<sup>2</sup> A/32/44, annexes.

<sup>3</sup> United Nations, *Treaty Series*, vol. 597, No. 8641, p. 42.

16. Mr. FRANCIS (New Zealand) observed that the fact that his delegation had participated actively in efforts over the past three weeks to negotiate outstanding issues and points of concern even when the latter had not been of immediate interest to it was a measure of the importance which New Zealand attached to the adoption of a universally agreed convention on the law of the sea. Only through a widely agreed convention would his country's direct interest in the law of the sea be fully protected and peace and stability on the world's oceans be guaranteed.

17. With regard to the various reports presented at the 157th meeting, his delegation, together with a number of other countries in the South Pacific region, attached great importance to the question of participation in the convention by the fully self-governing associated States of the Cook Islands and Niue. Paragraph 13 *bis* of document A/CONF.62/L.86 noted that provision had been made in the new text of article 305, paragraph 1, for such entities to participate in the convention. The text of paragraph 1 (b) of the proposed new article 305 met the concerns of his country and, more important, of the Cook Islands and Niue as set out in document FC/10 and also covered the entities described in document FC/19.

18. His country's long-standing interest in the so-called transitional provision stemmed from its responsibilities with regard to Tokelau, the one remaining territory on which it continued to report to the United Nations under Article 73 (e) of the Charter. His delegation had always supported the principle underlying the transitional provision. Its implementation of an exclusive economic zone for Tokelau had been undertaken only after consultation with the people of Tokelau and at their request, and New Zealand had made the solemn commitment that any benefits obtained from that zone would be applied exclusively for the benefit of that people. It none the less recognized the difficulties that other delegations had had with the language and placement of the transitional provision and believed that the draft resolution in annex III to document A/CONF.62/L.86 represented a satisfactory compromise.

19. His delegation was extremely grateful for the efforts made by the President and the Bureau to resolve the many complex issues involved in the question of participation and believed that the report in document A/CONF.62/L.86 brought the Conference much closer to a consensus on those issues.

20. The report contained in document A/CONF.62/L.87 was also important. In particular, his delegation entirely supported the conclusion reached by the Chairman of the Second Committee in paragraph 13 of the report, as well as his conclusion that, of the 10 informal suggestions discussed in the Second Committee over the past three weeks, only the United Kingdom proposal regarding article 60, paragraph 3 (C.2/Informal Meeting/66), seemed to justify a change in the existing text, a change which his delegation supported.

21. With regard to paragraph 10 of the same report, his delegation continued to believe that the formulation of article 63, paragraph 2, could be improved and that that would significantly enhance the prospects of a consensus. It did not, however, believe that agreement would be possible on any change to existing texts relating to the delicate issue referred to in paragraph 12. The present text of article 21 remained the only possible basis for consensus.

22. In a statement to an informal meeting of the First Committee on 16 March, he had noted that New Zealand had no companies with an interest in sea-bed mining and stood to gain nothing from Part XI of the draft convention. It was therefore for others with a more direct interest in sea-bed mining issues to comment in detail on the proposals in document A/CONF.62/C.1/L.30. Whatever views there might be on their details, however, those proposals were clearly a major step forward in the search for a consensus. In that regard, his

delegation had taken particular note of the President's comment at the 157th meeting that, although the informal negotiating phase in the Conference's work programme had now ended, the common goal was still to work for a convention that could be adopted by consensus on 30 April. His delegation was ready to assist in whatever way it could in the effort to promote agreement in the coming weeks.

23. Mr. ARIAS SCHREIBER (Peru) said that the proposals which had emerged from the recently concluded informal negotiations would make it possible to solve the main questions that had been identified as still pending at the end of the ninth session. However, his delegation regretted the attempts of the United States delegation to introduce radical changes into Part XI of the draft convention, as well as the inflexibility shown by a number of Eastern European delegations in opposing certain suggested minor improvements to the text of a few articles in Parts II, V and VII.

24. The Peruvian delegation supported the report of the President on the question of participation (A/CONF.62/L.86) and recommended that the texts proposed in it for articles 1 *bis*, 156, 305, 306, 307 and 319, and for annex IX, should be incorporated in the draft convention. It would also accept the draft decision on national liberation movements which had participated in the Conference as observers, the formula for paragraph 2 of the draft resolution establishing the Preparatory Commission, which covered participation by national liberation movements, and the draft resolution (A/CONF. 62/L.86, annex III) embodying a declaration by the Conference on provisions applicable to the peoples of territories that had not attained full independence or were under colonial domination. In that connection, the Peruvian delegation shared the view of the Group of 77 that such acceptance must be subject to two conditions: first, the simultaneous acceptance by other delegations of the proposed texts as a reasonable basis for a final settlement, and second, the possibility of continuing consultations which would widen the prospect for consensus among the delegations most directly concerned.

25. The Peruvian delegation fully supported the views expressed by the Chairman of the Group of 77 on the matters dealt with by the First Committee. It also endorsed the views put forward in the report of the Chairman of the First Committee. It trusted that the delegations of the United States and other Western countries would understand that in the present circumstances the draft convention, despite its defects, constituted the best possible compromise for reconciling the interests of all States. The Peruvian delegation would accept any effort designed to bring about the adoption of the draft by consensus provided that the principles adopted in 1970 and the fundamental features of the régime which had been negotiated with the active participation of the United States and the other States taking part in the Conference, were preserved in their entirety, thereby ensuring that the Area would be administered for the benefit of both the industrialized nations and the developing countries.

26. He regretted that the efforts to overcome various outstanding problems in the work of the Second Committee without at the same time impairing the balance of the substantive provisions of the draft convention had been thwarted by the systematic opposition of a minority of delegations. The result was that provisions remained in the draft convention on which no consensus had been achieved, such as article 21 on the right of innocent passage through the territorial sea, or article 63 on stocks moving between the exclusive economic zone and the high sea. The Peruvian delegation shared the view that article 21 did not invalidate national legislation adopted by coastal States for reasons of national security, but it considered that that understanding should be made plain in order to avoid possible later controversy. As far as the United Kingdom's proposed amendment to article 60, paragraph 3,

was concerned, the Peruvian delegation was opposed to its inclusion until paragraph I of that article had been revised as proposed by the delegations of Brazil and Uruguay.

27. It was unfortunate that the representatives of the Soviet Union, Bulgaria and the German Democratic Republic had objected without legal justification to the Peruvian delegation's proposed change to the wording of article 56. As a result the informal consultations had ended without a consensus, despite the fact that the other delegations participating had agreed to the suggested change. The proposal to rearrange certain articles in Part VII had met the same fate. Although other delegations had also had doubts about the scope of the rearrangement, the main opposition had come from the representatives of those three States. His delegation understood the political reasons for their attitude, and their argument that any amendment of the articles in question could encourage the move towards making fundamental changes in Part XI. He was sure that, if that possibility was removed, the representatives of the Eastern European States would co-operate in amending the articles in question so that the draft convention could be made as perfect as possible before the decision-taking process started.

28. In view of the decision of the Chairman of the Third Committee to submit its recommendations direct to the Drafting Committee rather than hold a meeting of the Committee to examine them, the Peruvian delegation would abstain from endorsing them as it would have wished to do. It would, however, support the reports of the Chairman of the Drafting Committee on the work of the first stage (A/CONF.62/L.85 and Add.1 to 9 and L.89) and on the amendments suggested in document A/CONF.62/L.90, approved in informal plenary meeting, in regard to articles 147 to 185 in Part XI. Given the complexity of the Drafting Committee's task, it was clearly necessary that it should be allowed time to complete its work with the desired care and precision.

29. Mr. GOERNER (German Democratic Republic) thanked the Collegium and the President for their efforts in securing proposals that could solve the last few pending issues in regard to the draft convention on the law of the sea. The Conference had thus successfully completed the first stage of its programme of work for the eleventh session. In his delegation's view, the results of the negotiations, as expressed in documents A/CONF.62/L.86 to L.90 and A/CONF.62/C.1/L.30, would facilitate the adoption of the convention in accordance with the established programme of work.

30. In regard to the proposal in annex I of document A/CONF.62/L.86 concerning participation in the convention, his delegation considered that international organizations could be parties to the convention only within the scope of the powers conferred upon them by their member States. Although in essence the proposal took account of that legal position, article 4, paragraph 6, of annex IX needed to be made still more specific. Despite the drafting improvements made in the course of the review, it was not yet sufficiently clear that the provision did not restrict the rights of third States under the convention. His delegation therefore proposed that the words "including provisions relating to the mutual granting to the nationals of its States members of national treatment or any other special treatment" should also be inserted after the words "or any acts relating to it" in article 4, paragraph 7.

31. National liberation movements recognized by the United Nations and by the regional intergovernmental organizations concerned had a political, moral and legal right to become parties to the new convention. The draft decision proposed in annex II of document A/CONF.62/L.86 did not yet make that clear. While his delegation would not obstruct the adoption by consensus of the arrangement proposed in annex II, it retained its position of principle that national liberation movements recognized by the United Nations and by the

regional intergovernmental organization concerned must have the right to become parties on an equal footing to international instruments which affected their interests.

32. Although his delegation considered that the transitional provision should be regarded as a component of the final clauses, it would not stand in the way of a consensus on annex III of document A/CONF.62/L.86.

33. The draft resolution on preparatory investment protection submitted in annex II of document A/CONF.62/C.1/L.30 was in principle acceptable to his delegation. He felt, however, that paragraph 12 (d) should be made more specific and should make it clear that obligations for the financing of the Enterprise prior to the entry into force of the convention were incumbent only on the pioneer investors. The delegation would also agree to the draft resolution on the Preparatory Commission in annex I of the document, which reflected the position of the overwhelming majority of participants that only States which had signed the convention should become members of the Preparatory Commission. The powers proposed for the Commission, particularly the provision that the Commission could make only recommendations, which would then have to be finally adopted by the Authority, were in line with ideas put forward by the delegation of the German Democratic Republic on earlier occasions. It would have no difficulty with paragraph 4, if there could be provision to the effect that rules and regulations relating directly to activities in the Area should be adopted, as a matter of principle, by consensus, in accordance with article 161, paragraph 7 (d). The provision of paragraph 13 that the Preparatory Commission should be financed from the regular United Nations budget was also in line with his delegation's position. He stressed once again that the Commission should seek to achieve the greatest effectiveness at minimum cost and should therefore make the most extensive use possible of existing United Nations facilities and services.

34. The report submitted by the Chairman of the Second Committee (A/CONF.62/L.87) was also acceptable to his delegation. The discussions in the Second Committee, as stated in paragraph 13 of that report, had shown that there was a real consensus on the need to preserve the fundamental elements of those parts of the convention which were within the Committee's competence.

35. His delegation agreed with the statement that most of the informal suggestions submitted in the course of the debate did not meet the requirements of document A/CONF.62/62.<sup>4</sup> It associated itself, therefore, with the conclusion in paragraph 4 that "after long and laborious negotiations held in the Committee over so many years it would not be desirable to reopen fundamental issues and questions and thus disturb the balance achieved through generally accepted solutions of compromise".

36. At the opening meeting (156th meeting) of the session, the Secretary-General had pointed out that the establishment of a legal régime for the seas would demand concessions from everyone. As a geographically disadvantaged State, the German Democratic Republic had made far-reaching concessions in the course of the long negotiations. It had done so, for instance, in regard to the provisions on the exclusive economic zone, which did not offer a just and adequate solution either to the problems of States with a tradition of fishing in distant waters or to those of the land-locked and geographically disadvantaged countries. The same was true of the provisions of article 76 on the outer limits of the continental shelf. The States which would gain most from those provisions were those with a broad continental shelf, the very countries that already drew the greatest benefit from the concept of the

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

exclusive economic zone. But despite the fact that those and other provisions of the draft convention did not meet the interests of the German Democratic Republic, it would refrain from proposing amendments to them in order not to jeopardize the overall compromise that had been achieved.

37. His delegation would accept the provisions of the convention negotiated in the Third Committee without qualifications and would agree to the drafting changes proposed by the Chairman of the Third Committee in document A/CONF.62/L.88.

38. His delegation endorsed the statement of the Chairman of the First Committee at the 157th plenary meeting that it was the general opinion that the proposals for amendment put forward by the United States called into question all substantive matters in Part XI and could not therefore provide a good basis for negotiations. It was essential for the United States to give up its destructive attitude. It was the common objective of the Conference to work for a convention that could be adopted on 30 April 1982 by consensus. His delegation was prepared to work for the widening of the scope of consensus and it expected other participants to take the same approach. While it was desirable that the convention should be adopted by consensus and that all countries should be parties to it, the German Democratic Republic, like the other socialist countries, was in favour only of a universal convention which would take into account the interests of all States and would not grant unilateral advantages to any country. Therefore, if one country or several countries were to continue trying to change the fundamentals of the existing draft convention in order to infringe upon the interests of other countries and gain unilateral advantages for themselves, and thus to undo the consensus, the German Democratic Republic would be prepared, together with other countries, to adopt the draft convention as a whole by vote.

39. Mr. MAZILU (Romania) said that some of the important issues left pending after many years of consultations and negotiations were the right of innocent passage of foreign warships through the territorial sea, the access of geographically disadvantaged States to fishing grounds, and certain points relating to the final clauses, in particular the question of reservations to the convention.

40. The debates and consultations so far had shown again that there was no consensus on the provisions of article 21. The text should be clarified in order to refer explicitly to the legitimate right of the coastal State to require prior authorization or notification for the passage of foreign warships through the territorial sea. Under existing international law, that right was exercised on the basis of sovereignty, national integrity and the security of States within their territory—of which the territorial sea was obviously a part. He urged the President and the Collegium of the Conference to do all that they could to bring about a negotiated solution.

41. In the view of his delegation, the provisions of the draft convention did not cover the legitimate needs of geographically disadvantaged States for access to fisheries, and further efforts must be made to find an equitable solution. Romania, as a coastal State situated in a region poor in living resources, believed that it was essential to take such disadvantaged situations into account in concluding fishing agreements and within international organizations dealing with fisheries.

42. As far as reservations to the convention were concerned, his delegation objected strongly to the provisions of article 309. As it had stated during earlier debates, it was convinced that States parties had the right, under international law, to make reservations to any multilateral treaty in order to protect their interests. The question was one of principle directly related to the sovereignty of States. The way to reduce the number of possible reservations to a treaty was not by prohibiting or restricting reservations but by leaving no issues

pending and, consequently, taking the interests and positions of all the participating States into account through patient and constructive negotiations at the drafting stage. On the other hand, delegations and the organs of the Conference had to realize that unless some problems of substance were settled in a way acceptable to all, the question of reservations would become crucial and would have to be solved at a later stage of the conference. His delegation believed that not all opportunities for real negotiation had been exhausted and that full use should be made of all the avenues offered by the rules of procedure, including those of article 37, in order to find generally acceptable solutions.

43. With regard to the provisions relating to delimitation, his delegation had accepted the compromise formula devised at the previous session, on the understanding that the basic factors should be agreement between the States concerned and equitable principles. Uninhabited islets had no maritime spaces of their own and should not have negative effects on the maritime spaces belonging to the main coasts of the States concerned. Pending an agreement between the States concerned, no unilateral measures should be taken which would jeopardize an ultimate agreement.

44. In respect of the Area, it was essential that the principle that all rights in the resources of the Area were vested in mankind as a whole, on whose behalf the Authority would act, should be made workable. The Area's mineral resources were not subject to alienation save in accordance with the rules, regulations and procedures stipulated in the convention. His delegation, in common with many others, believed that any proposal to improve Part XI of the draft convention must take that requirement into account. It was essential that the principles, concepts and fundamental structure of that part of the convention should not be endangered.

45. The powers, functions and structure of the Preparatory Commission agreed upon at the previous session of the Conference should be maintained. If additional expenditure appeared necessary as a result of the future powers of the Preparatory Commission in respect of the treatment of preliminary investments, it should be borne by the applicants alone. The treatment of preliminary investments referred only to the exploration of the resources of the Area and not to their exploitation. His delegation supported the proposal that treatment of preliminary investments should be considered only for States which were signatories of the convention. Moreover, the activities carried out by States or their entities in the Area must be fully consistent with the provisions of the convention. His delegation endorsed the provision in document A/CONF.62/C.1/L.30 that the expenses of the Preparatory Commission should be met from the United Nations regular budget (annex I, para. 13). There should be no additional costs resulting from the organization of meetings of the Preparatory Commission.

46. With regard to participation in the convention, his delegation joined the overwhelming majority in supporting the participation in the convention of national liberation movements recognized by the United Nations. Concerning the participation of international organizations, it reaffirmed its position that such organizations could have only a limited status, applying exclusively to those fields in which their member States had transferred powers to them in respect of specific matters dealt with in the convention. That would include their right to sign, conclude and accede to international agreements on their members' behalf and to exercise rights and responsibilities in respect of those specific matters. In accordance with that position, his delegation insisted on the rule of unanimity, and rejected the so-called majority rule in respect of the accession of an international organization to the convention.

47. In conclusion, he reaffirmed his delegation's readiness to participate actively in consultations and negotiations aimed at

finding generally acceptable solutions to all outstanding issues which would take into account the legitimate interests and positions of all participating States. Only in that way would it be possible to adopt a lasting, viable and universal convention on the law of the sea.

48. Mr. SEALY (Trinidad and Tobago) said that in annex I of their report (A/CONF.62/C.1/L.30) the co-ordinators of the working group of 21 proposed a draft resolution establishing the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea. Some new elements had been introduced relating, for example, to the way in which the Preparatory Commission would adopt its rules of procedure, the exercise of certain powers and functions by it in respect of the treatment to be accorded to preparatory investments, and studies that would be undertaken by the Commission on the problems that would be encountered by developing land-based producers, in particular producers of cobalt and manganese, as a result of production from the Area. An important point in that connection was the establishment of a compensation fund as an integral part of the system of compensation already envisaged under article 151, paragraph 4, of the draft convention, the modalities of which were to be worked out by the Economic Planning Commission. The membership of the latter organ must reflect adequately those States which were likely to be most seriously affected by sea-bed mining. His delegation would therefore support the amendment to article 163, paragraph 4 (WG.21/Informal Paper 23), proposed by the Group of 77. His delegation also welcomed the new proposal in paragraph 6 of the draft resolution relating to the legal capacity of the Preparatory Commission, and that in paragraph 8 relating to the establishment of a special commission to take all necessary measures for the early entry into effective operation of the Enterprise, the commercial mining arm of the Authority. It would therefore support the draft resolution on the Preparatory Commission, in the belief that it constituted an improvement that could result in consensus. It also wished to place on record its appreciation of the strenuous efforts made by the Government of Jamaica to provide the necessary facilities so that the Preparatory Commission could meet in Jamaica as often as was necessary for the expeditious performance of its functions.

49. The draft resolution on preparatory investments (A/CONF.62/C.1/L.30, annex II) contained many positive elements, such as the requirement that investors should be signatories of the convention and the restriction on the scope of its application to the exploratory stage; the idea that the instrument for dealing with preparatory investments should be a resolution was likewise acceptable. Several other aspects of the proposal, however, still presented difficulties, and a further opportunity for negotiation should be provided so that the text could be further improved and thus command the widest possible support. His delegation felt that the door should be left open until a later date or until the entry into force of the convention, in order to enable developing States also to qualify as pioneer investors, but that it should be shut to applications from industrialized countries or their nationals, as envisaged in paragraph 1 (a) of the draft resolution. In addition, the legal effects of the resolution should lapse on the entry into force of the convention, in order to avoid the existence of a dual system.

50. On the question of participation in the convention, his delegation had noted carefully the many suggestions of the President aimed at dealing with the question of the participation of international organizations such as the European Economic Community, of non-independent territories and of national liberation movements, as well as the transitional provision reserving the benefits of the convention to the colonial peoples rather than the administering Power. Those suggestions would advance consultations in respect of those four

issues, which should continue to be treated as a package, and qualitatively improved the prospect of reaching general agreement on those complex questions. His delegation could therefore accept the proposals, although it recognized that not all sides had been called upon to make comparable sacrifices in order to attain the compromise. It was yet another instance of the Group of 77 being called upon to make the greater sacrifice.

51. His delegation agreed with the view expressed by the Chairman of the Second Committee in his report (A/CONF.62/L.87) to the effect that the fundamental elements of those parts of the convention which were within the competence of the Second Committee had to be preserved. It could, however, support the proposal of the United Kingdom to amend article 60, paragraph 3 (C.2/Informal Meeting/66), in order to clarify the exact nature of the obligations of States with respect to the removal of abandoned or disused installations. It also believed that a satisfactory compromise solution could be found which would meet the concern of States, including Trinidad and Tobago, about the provisions of the existing text on the passage of warships through the territorial sea. It could therefore support a solution to the problem on the lines suggested by the delegation of Argentina and others in document C.2/Informal Meeting/58/Rev.1.

52. In conclusion, he paid a tribute to the efforts of the President and the Chairman of the First Committee, both of whom had demonstrated a firm resolve to settle the outstanding issues in a manner that would command the widest possible support. The delegation of Trinidad and Tobago would continue to co-operate with them and with the other members of the Collegium in carrying out the agreed programme of work with a view to the adoption of a convention to which all States could accede and which would represent a landmark in the field of international co-operation among States in their quest for justice, peace and equity in ocean space.

53. Mr. KOZYREV (Union of Soviet Socialist Republics) expressed satisfaction with the results achieved during the stage, just concluded, of negotiations on outstanding issues. A particularly constructive contribution had been made by the developing countries of the Group of 77. The most important result was the fact that the overwhelming majority of participating States had firmly supported the adoption of the convention at the current session on the basis of the existing draft, and that in spite of the obstructionist attitude of the United States of America. The conference had refused to consider as a package the conditions and proposals put forward by the United States, particularly in view of the fact that they required fundamental changes in Part XI; it was not too late, however, for the United States and the small group of countries which supported it to adopt a constructive and realistic approach and join with the overwhelming majority, thereby making consensus possible.

54. His delegation regarded the provisions relating to the establishment of the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) as a balanced compromise. The new provision that the rules of procedure of the Conference itself should apply with respect to the adoption of the rules of procedure of the Commission was very important. His delegation understood it to mean that the specific procedures for adopting decisions on questions of substance would be determined by the Preparatory Commission on the basis of consensus whenever possible, the two-thirds majority formula being resorted to only in exceptional cases and as a last resort. Such a compromise would be acceptable provided that the Collegium stipulated in its memorandum that draft rules, regulations and procedures for activities in the Area had to be adopted by consensus in the Commission.

55. The draft resolution governing preparatory investment (A/CONF.62/C.1/L.30, annex II) took account of a number of observations made by his delegation and others and

brought preparatory investment protection into conformity with the provisions of the convention. It also reflected the suggestions made by the Group of 77, which his delegation supported, relating to the training of personnel for and cooperation with the Enterprise.

56. As the Chairman of the First Committee had stated in his report (A/CONF.62/L.91), the proposal made by a number of countries to change the composition of the Council of the Authority had not been supported. The Conference should not countenance it, for its effect would be to go back on many agreements which had already been reached, in particular with respect to the composition of the Council and its decision-making machinery. Those latter provisions were the main basis for the entire compromise draft convention and must not be subject to revision.

57. His delegation was categorically opposed to the proposal, mentioned in the report of the Chairman of the First Committee, that decisions on budgetary questions should be adopted by a majority of three-quarters plus one. Such a method would allow one group of States, namely the Western States, to block Council decisions, resulting in discrimination against other groups, including the East European socialist States, represented by fewer members.

58. Taking into account the majority view, and on the understanding that the question of participation was a component of the general agreement on the convention as a whole, his delegation might find it possible not to oppose the adoption of the President's proposed provisions relating to participation in the convention (A/CONF.62/L.86), in particular by peoples which had not yet attained full independence and by certain international organizations, subject, however, to a number of observations. First, his delegation fully supported the national liberation movements recognized by the United Nations, such as the Palestine Liberation Organization, and shared the view of the Group of 77 that they were entitled to full participation in the convention and not only to participation as observers in the work of the bodies established by the convention. Secondly, his delegation agreed that the "transitional provision", to the effect that the rights established by the convention to the resources of the territory whose people had not yet obtained full independence were vested in the inhabitants of that territory, should be included in the draft convention; it should, however, be treated in the body of the text and not as a separate resolution of the Conference. Thirdly, in connection with the proposal concerning "self-governing associated States", he wished to make it clear that if the Trust Territory of the Pacific Islands (Micronesia), or any part thereof, which was under the trusteeship of the United States of America, sought participation in the convention, his delegation would assume that any change in the status of that territory and the terms of the trusteeship agreement would be made only by a decision of the Security Council, in accordance with the terms of the Charter. Lastly, his delegation did not object to the participation, on certain conditions, of international organizations, although it believed that it would be more appropriate to provide that such organizations could only accede to the convention and that only if all their members became parties to the convention.

59. His delegation had no substantive comments to make on the reports of the Chairmen of the Second and Third Committees. Although it was not happy with a number of the provisions of the draft convention on questions within the competence of those Committees, it was prepared not to seek changes in the relevant articles, in order to preserve the existing compromise package of agreements, provided that other delegations took the same position. It was ready to adopt the same approach to the entire official draft convention completed at the current session.

60. In his delegation's view, the Conference had created all the necessary conditions for the adoption of the draft convention. If the United States and other countries ceased trying to gain exclusive benefits from the process, to the detriment of the interests of other countries, it would be possible to adopt the convention by consensus. Failing that, the only way to preserve the package of compromise agreements so painstakingly worked out would be to take a vote on the draft convention as it stood, as a whole.

61. Mr. TIWARI (Singapore) said that, in examining the arrangements for the treatment of preparatory investments proposed in document A/CONF.62/C.1/L.30, annex II, it was important to remember that the scheme had been envisaged by the Group of 77 as a necessary evil intended to bring the continuing operations of States and other entities which had made substantial investments in the development of sea-bed mining and technology within the framework of the convention, thereby preventing the establishment of a separate reciprocating States régime or "mini-treaty". It was the view of his delegation that the proposal in question was in line with that underlying intention: first, it established a cut-off date for the identification of pioneer investors, leaving a larger area for exploitation by the Enterprise and other developing countries, and included a less stringent rule for developing pioneer investors; secondly, it disallowed any exploitation prior to the entry into force of the convention, ensuring that sea-bed exploitation would take place only in accordance with the provisions of the convention; thirdly, it stipulated that any pioneer activity before or after the entry into force of the convention must be in accordance with its terms; and, lastly, it would apply within the framework of the provisions on production ceilings and production authorizations, thereby protecting the interests of developing land-based producers. Those elements and many other positive aspects made the proposal a good basis for achieving a consensus.

62. He emphasized the importance of the Preparatory Commission in paving the way for the establishment of the International Sea-bed Authority, the Enterprise and the International Tribunal. The draft resolution contained in annex I to document A/CONF.62/C.1/L.30 appeared to address all the major areas of concern, in that it allowed all participants in the Conference to take part in the deliberations of the Commission, provided for financing, empowered the Commission to make recommendations with a view to minimizing the difficulties of land-based producers affected by production from the Area and established a special commission to bring about the early entry into effective operation of the Enterprise.

63. On the troublesome issue of participation in the convention, the proposals in annexes I and II of document A/CONF.62/L.86 were not necessarily ideal, for it was in the nature of a package that the result was not wholly satisfactory to any group. His delegation supported the proposals, however, as the solution most likely to command general acceptance. His delegation also welcomed, as an acceptable compromise among the delegations most concerned, the draft resolution in annex III of that document, aimed at protecting the rights and interests under the Convention of the peoples of territories under domination.

64. With regard to Second Committee matters, his delegation was sympathetic to the proposal put forward by the United Kingdom concerning article 60, paragraph 3 (C.2/Informal Meeting/66). However, he shared the view of other delegations that the proposal tilted the balance against navigational interests by the use of the words "taking account of". The representative of the United Kingdom had assured his delegation that "it is the intention of the proposal that once relevant standards are established by the competent organization, they will have to be complied with", and also

added, "In this regard I can assure delegations that we shall be working with other countries with the intention that the competent organization should establish standards in this field as soon as possible." In view of the stated intention of the proposal to ensure that relevant standards, once established, would be complied with, that obligation should be indicated by a more peremptory expression using "conform to" or "comply with". That would be in line with the wording of paragraph 6 of the same article, and he recommended that the Collegium should make the necessary change.

65. His delegation could accept the drafting changes proposed by the Chairman of the Third Committee (A/CONF.62/L.88). However, he noted that in the redraft of article 222, the reference to "other provisions of the Convention" had been omitted. He suggested that the matter might be looked at again to ensure that something had not been omitted unintentionally.

66. His delegation also supported the drafting changes proposed by the Drafting Committee (A/CONF.62/L.89) and wished to record its appreciation of the Committee's hard work.

67. He drew attention to a difference in the wording of the first sentences of article 313, paragraph 1, and article 314, paragraph 1. The use of the word "exclusively" in article 314 and its absence from article 313 created a situation in which no amendment procedure existed for mixed questions—those which related partly to the Area and partly to some other aspect of the convention. That was an obvious omission which should be rectified.

68. His delegation would support the adoption of the proposal first made by Nepal in 1978 for a common heritage fund (A/CONF.62/65).<sup>5</sup> Such a fund would benefit all countries, especially the developing countries.

69. In connection with the problems associated with Part XI of the convention, on which, regrettably, no real progress had been made, his delegation welcomed the proposals in document WG.21/Informal Paper 21 and Add.1 prepared by the group of 11. Although probably not reflecting all the concerns of each side, those compromise proposals would increase the likelihood of the Conference's achieving its goal of adopting a universally acceptable convention by the end of the current session. It was important to maintain the momentum achieved during the early part of the session, and his delegation appealed to the United States to consider reducing its demands so that it could join in negotiations with the Group of 77 and others.

70. Mr. MONNIER (Switzerland) said that the results of the negotiations during the first three weeks of the current session were causing his delegation disquiet. Although certain compromise solutions had been put forward on specific questions pending from the tenth session, the one on which the ultimate value and practical effects of a future convention depended, namely, the amendments to Part XI requested by the delegation of the United States, had scarcely been debated and had not yet been resolved. Nevertheless, if the political will existed on all sides, it should be possible to overcome the obstacles and achieve a compromise. The efforts of a certain number of delegations as reported in document WG.21/Informal Paper 21 and Add.1 showed the path to be followed. The amendments proposed by the group, while not affecting the basic elements of the régime or calling into question the system of parallel exploitation, related to adjustments and corrections which many delegations wished to be introduced. Even if many of the passages of Part XI criticized by the delegation of the United States were not covered, that was no reason for not considering the solutions already suggested.

71. Among the desirable arrangements, he noted in particular those relating to the transfer of technology and the composition of the Council. The viability of the parallel system required the Enterprise to have at an early date not only financial resources but also the technical means needed for its exploration and exploitation activities. His delegation reaffirmed its reservations regarding the provisions in the convention which were not consistent with that objective, such as that in article 5, paragraph 3 (e) of annex III, the effect of which was further to prejudge the negotiations regarding transfer of technology taking place in other fora.

72. As for the composition of the Council, his delegation was a sponsor of the proposal, in document WG.21/Informal Paper 19, relating to article 161, paragraph 1. The reasons for it were well known; for example, his country, whose contributions according to the United Nations scale of assessments were substantial, would as a party to the convention assume extremely heavy financial obligations without enjoying, directly or indirectly, any of the advantages which many other industrialized or developing States would derive from the régime established in Part XI. If Switzerland, like other medium-sized industrialized countries, were in practice to be excluded from membership of the Council, that would be an act of discrimination and an injustice which his Government would find it hard to understand. A small increase in the membership of the Council was one way of ensuring adequate representation for countries such as his.

73. He also hoped that another instance of discrimination could be removed. Article 161, paragraph 2 (a), provided for land-locked and geographically disadvantaged States to be represented to a degree which was reasonably proportionate to their representation in the Assembly. Under article 161, subparagraph 2 (b), the same should apply to the coastal States, especially developing States, when they did not fall under any of the first four categories defined in article 161, paragraph 1. That amounted to more favourable treatment for the coastal States, which no objective reason warranted.

74. On the subject of the review conference provided for in article 155, his delegation objected to the prospect that that Conference might impose changes decided on by a procedure which differed from that applied at the Conference on the Law of the Sea.

75. As for the results of the work of the working group of 21 as reported in document A/CONF.62/C.1/L.30, his delegation could support the draft resolution concerning the establishment of the Preparatory Commission. In the matter of the protection of preparatory investments, his delegation felt that pioneer investors should in so far as possible have the assurance of being able to exploit sites in which large investments had been made for prospecting and exploration. The relevant draft resolution was generally satisfactory as providing the elements of a compromise.

76. Lastly, his delegation had no difficulty with the informal proposals and the draft decision of the President contained in annexes I and II of the report of the President on the question of participation in the convention (A/CONF.62/L.86).

77. Mr. NAKAGAWA (Japan) said that his delegation was gratified by the results achieved in the first three weeks of the session with regard to the three pending issues, namely, the Preparatory Commission, the treatment of preparatory investment and participation.

78. His delegation supported the draft resolution establishing the Preparatory Commission (A/CONF.62/C.1/L.30, annex 1) and hoped that the Conference would accept it. As for the venue of the Preparatory Commission, his delegation could accept either Kingston or New York.

79. As for the draft resolution on preparatory investment in pioneer activities (A/CONF.62/C.1/L.30, annex 11), his delegation regarded the ideas contained in it as fair and reason-

<sup>5</sup> *Ibid.*, vol. IX (United Nations publication, Sales No. E.79.V.3)

able and hoped that the Conference would accept it. His delegation would have been happier had it contained a provision for conflict resolution with respect to overlapping claims, analogous to that in article 7 of annex III of the draft convention.

80. The question of amending Part XI of the draft convention, raised by the United States, had not been addressed sufficiently. His delegation welcomed in that connection the very valuable compromise proposal submitted by the group of 11 as a basis for further efforts to bring the Conference to a successful conclusion. It particularly welcomed the President's assurance that the Conference would continue to make efforts to have the convention adopted by consensus.

81. With regard to the questions of participation and of the transitional provision, his delegation could accept the proposal made by the President in his report in document A/CONF.62/L.86.

82. With regard to Second Committee matters, his delegation shared the view that the provisions relating to them were based on a very delicate balance which should not be disturbed. However, the amendment proposed by the United Kingdom concerning article 60, paragraph 3 (C.2/Informal Meeting/66), improved the existing text without affecting that balance and his delegation could therefore support it.

83. His delegation fully supported all efforts to ensure the adoption of a convention acceptable to all the participants.

84. Mr. TORRAS de la LUZ (Cuba) said that his delegation wholeheartedly endorsed the views expressed by the Chairman of the Group of 77 and agreed that the two draft resolutions contained in the annexes to document A/CONF.62/C.1/L.30 offered, respectively, an improved basis for consensus on the establishment of the Preparatory Commission and a better framework for a generally acceptable system for the treatment of preparatory investments. In the latter resolution (annex II), nevertheless, there were elements which required amendment.

85. The use in the draft resolution of the term "polymetallic nodules" distorted the concept of exploitable resources embodied in the draft convention. It was quite possible that as exploration continued other valuable products might be discovered, and they should be taken into account in the draft resolution in the same way as in article 133 of the draft convention.

86. The ceiling of 150,000 square kilometres established in paragraph 1 (e) of the draft resolution for the "pioneer area" seemed excessive. Furthermore, it was important to make a distinction between the area of exploration and that of exploitation.

87. The figure of \$US 1 million given in paragraph 7 (b) as minimum expenditure for every pioneer investor should be raised; it seemed very low by comparison with the sums cited in the discussions of the working group of 21 as necessary for the carrying out of preparatory activities.

88. In paragraph 8 (a) an addition should be made to the last sentence to the effect that the Authority should approve applications in accordance with the rules established by the convention, since as the paragraph stood approval would be automatic.

89. The possibility that a pioneer investor might alter its nationality and sponsorship, provided for in paragraph 10 (b), caused his delegation some concern in that it might lead to the use of "flags of convenience".

90. Paragraph 13 needed to be changed, because, quite apart from taking into account the terms of the resolution relating to pioneer investors, the Authority and its organs had to be governed by the provisions of the convention. Lastly, his delegation regarded paragraph 14 as very negative and proposed that it should be replaced by that contained in the draft

provisions on preparatory investment protection prepared by the Group of 77 (A/CONF.62/L.116).

91. His delegation was in agreement with the report submitted by the Chairman of the Second Committee and shared his conclusion that the 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. The report of the Chairman of the Third Committee also had the approval of his delegation.

92. A first reading of the President's proposals relating to the question of participation in the convention (A/CONF.62/L.86) indicated that they would serve to improve the prospects for achieving agreement. However, his delegation continued to support the full participation in the convention of national liberation movements recognized by the United Nations and by regional organizations. Furthermore, the acceptability or otherwise of the proposals on that issue could not be considered in isolation but had to be seen in the context of the "package". In agreeing to discuss guarantees for pioneer investors the Group of 77 had made a considerable concession, for such guarantees implied recognition of the unilateral arrangements on which they were based, arrangements which had been vigorously condemned not only by the Group of 77 but by the Conference as a whole. The least that the Group of 77 could expect was that the guarantees in question would be granted strictly in accordance with the terms of the convention, for otherwise they would amount to recognizing as lawful the "mini-treaties" contemplated by a number of capitalist Powers.

93. The Group of 77 had made a multitude of other concessions over the years of negotiations. Concessions had admittedly been forthcoming also from the developed countries, but quite apart from the disparity of the resources of the two groups was a fundamental difference: while the Group of 77 remained faithful to the agreements so painstakingly achieved, the United States was attempting to discard them completely, ignoring its commitments and those of other capitalist Powers and the fact that the Group of 77 had taken those agreements into account in making its concessions on the production ceiling formula.

94. Precisely because it remained loyal to those agreements, which had produced the negotiated draft convention as it stood, his delegation was firmly opposed to any attempt to reopen discussion on any of the fundamental, substantive elements on which compromise had been achieved through the determination to give the convention a universal character. His delegation would co-operate fully in the remaining stages of the process of adopting the convention.

95. Mr. HAMOUD (Iraq) said that his delegation was prepared to accept Part XI of the draft convention after the negotiated improvements had been made. It was in full solidarity with the Group of 77. The remaining obstacles should be surmounted in order to achieve a universal convention that safeguarded the interests of all States and peoples. Although his delegation deplored the position taken by the United States, it hoped that the efforts being made by the President of the Conference and a small group of delegations would yield positive results and enable the Conference to achieve that objective.

96. The paper submitted by the Group of 77 on participation in the convention reflected a sound position which safeguarded the interests of all. The participation of the national liberation movements in the convention as fully-fledged members would protect the interests of the peoples they represented and would also invest them with responsibilities arising from the convention. His delegation therefore fully supported the compromise proposal on national liberation movements outlined in paragraph 16 of the President's report

(A/CONF.62/L.86). The national liberation movements must be able to participate in the deliberations of the various organs of the Authority, to put forward proposals and receive documents and, most importantly, to have access to the International Tribunal for the Law of the Sea so as to be able to protect the rights of their peoples.

97. International organizations should not be allowed to participate in the convention unless their member countries had transferred to them their legal capacity in matters governed by the convention and unless a majority of their member countries had ratified the convention or acceded to it. Countries which had not ratified the convention or acceded to it and their nationals should not be allowed to benefit from the convention through the accession of international organizations to it.

98. As for the Preparatory Commission and the treatment of preparatory investments, his delegation supported the view of the Group of 77 that the President's paper provided a sufficient basis for achieving the desired solution.

99. With regard to Second Committee matters, his delegation supported everything that had been stated in the report of that Committee's Chairman in document A/CONF.62/L.87. The texts concerning those matters represented balanced compromises, and amending any of them would affect the others and jeopardize the convention in its entirety.

100. As matters stood, the provisions concerning the continental shelf would remove large areas from the common heritage of mankind and have them serve the interests of a limited number of States. Similarly, the provisions concerning the rights of land-locked and geographically disadvantaged countries in the economic zone did not adequately safeguard the rights of those States. The compromise put forward concerning the delimitation of the economic zone and the continental shelf did not provide a real solution to that complex issue. Moreover, the provisions concerning semi-enclosed seas would not be conducive to effective co-operation among the States with coasts on such seas. Despite those reservations, his delegation was prepared to accept the provisions in the spirit of compromise. It therefore opposed the proposal of certain delegations to amend article 21 (C.2/Informal Meeting/58/Rev.1) concerning the passage of warships in the territorial seas because it would prejudice the balance in the text. A requirement for prior notification of the passage of warships in the territorial sea would restrict the freedom of international navigation, affect international co-operation in the field of communications and be detrimental to the international community. The passage of all ships, regardless of type, in the territorial sea of islands which were close to the entrances of straits used for international navigation should be governed by the same régime as those straits, especially when there were no other straits equally suitable for navigation.

101. Mr. POWELL-JONES (United Kingdom), referring to the report of the Chairman of the Drafting Committee in document A/CONF.62/L.89, said that he supported the recommendation in paragraph 5 regarding that Committee's future work.

102. The Chairman of the Third Committee had suggested some drafting changes to the draft convention in his letter of 26 March (A/CONF.62/L.88). His delegation could readily accept those at the end of the letter, which were indeed of a drafting nature only, but those which had a substantive effect would have to be considered further before they were incorporated into any new text. That applied to changes involving article 196, article 216, paragraph 2, and articles 222 and 226, which his delegation was unable to support. The changes relating to article 210 required further explanation. In paragraph 3 of the letter, the Chairman had recommended possible changes in Part XI of the draft convention in the interest of harmonization. The articles to which he referred had a long

history and his delegation would have difficulty in accepting the suggested changes.

103. His delegation was pleased to note that the report by the Chairman of the Second Committee (A/CONF.62/L.87) had stated in paragraph 8 that the United Kingdom proposal concerning article 60, paragraph 3, met the requirements established in document A/CONF.62/62. Under that proposal, the following wording would be substituted for the second sentence of paragraph 3 of article 60: "Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking account of any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed." He had already explained to the Committee how the formulation proposed would cover satisfactorily the concerns of all the interested parties. His delegation believed that the incorporation of that proposal in the text in accordance with the procedure indicated in A/CONF.62/62 would improve the convention and be in accordance with consensus.

104. As for article 21, his delegation did not believe that a change in the existing text would improve the prospects of consensus on the matter. That had clearly emerged from informal consultations held by the Committee Chairman. The concerns which had been expressed by some delegations about the text were, in his delegation's view, adequately covered by the definition of innocent passage in article 19. In those and other ways his delegation could support without qualification the report of the Chairman of the Second Committee (A/CONF.62/L.87).

105. His delegation maintained its reservations on the idea of replacing the words "taking into account" in article 76, paragraph 8, by the words "on the basis of", as well as its view that paragraph 3 of article 121 should not appear in the text.

106. Turning to the report of the President on the question of participation in the convention (A/CONF.62/L.86), he said that his delegation fully supported the statement by the representative of Belgium regarding the proposals for the participation of international organizations. As for participation by national liberation movements, his delegation was prepared to accept the President's proposals with regard to signature of the final act, although it had some difficulty with the proposals for their participation in the Preparatory Commission and in the Authority, and also with the suggested amendments to article 319. Decisions on participation could better be taken by the bodies concerned, namely, the Preparatory Commission and the Authority.

107. The responsible authorities in his country had examined carefully the proposed draft resolution in annex III of document A/CONF.62/L.86 relating to non-self-governing Territories. It had long been his delegation's contention that the matters included there were alien to the convention. Appropriate provision existed in Article 73 of the Charter, and there was no need for any other provision. Moreover, his delegation had difficulty with the wording of paragraph 2 of annex III, which included an element which was inconsistent with the principle of Article 73 of the Charter that the interests of the inhabitants of the Territories were paramount. However, in the interests of reaching a compromise, his delegation would be prepared to consider a resolution along the lines indicated in annex III, provided it was likely to prove acceptable to all the other parties concerned, so as to save the Conference from having to give further consideration to the matter.

108. Turning to the report of the Chairman of the First Committee (A/CONF.62/L.91) and that of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30), he noted

that the draft resolution establishing the Preparatory Commission included provisions relating to its role with regard to preliminary investment. The appropriateness of those additions could not be judged until a number of questions relating to preliminary investment had been answered, but in the meantime his delegation had serious doubts as to whether a resolution was an appropriate method to confer legal capacity, as proposed in paragraph 6 (*ibid.*, annex I). Paragraph 13 did not meet his delegation's contention that the Preparatory Commission should be financed by a loan from the United Nations and not from the regular United Nations budget. With those reservations, his delegation recognized that the draft resolution on the Preparatory Commission had improved as a result of recent discussions.

109. The discussions at the intersessional meeting and in the working group of 21 on preparatory investment had been useful in clarifying the issues and in providing a suitable interim framework for pioneer investors to continue their work. His delegation was pleased to note that there had been general agreement that such an arrangement must be provided and recognized that the draft resolution governing preparatory investment in annex II of document A/CONF.62/L.30 represented a synthesis of many of the points raised in the discussions.

110. His delegation could agree that pioneer investors should proceed in a manner compatible with the provisions of the convention, but it had some difficulty with the proposal in annex II to the report of the co-ordinators of the working group of 21. The definition of pioneer investors itself created doubt about which entities might enjoy pioneer status. A future cut-off date for qualifying investment, and the possibility of qualifying with smaller initial investments, introduced uncertainty. Further uncertainty was introduced by the final paragraph of the draft resolution, which provided for automatic termination after five years; that undermined the degree of assurance that the resolution could provide for investors. The two essential elements of a preparatory investment protection provision were that it should provide both for access to a specific mining site and for the continuance of all stages of operations. Both were essential if the mining com-

panies were to be able to obtain the necessary finance. The current proposal did not provide that assurance, but it could be improved in order to do so. The diligence requirement included failed, unfortunately, to take into account the operating programmes of operators.

111. Turning to the question of compensation raised in document WG.21/Informal Paper 23, he said that his delegation felt that any such provision, whether applying during the life of the Preparatory Commission or after its entry into force, had to be viewed in conjunction with the other major provision of article 151, namely, limitation of production. As a means of providing for land-based producers whose economies might be adversely affected by sea-bed mining, his delegation was prepared to consider sympathetically schemes of economic adjustment assistance. That could be considered only if production limitation were changed significantly.

112. Turning to Part XI of the draft convention, he said that his delegation had consistently argued that the matters listed by the President of the United States in his statement of 29 January 1982 should be considered by the Conference. He hoped that with flexibility on both sides it would still be possible to agree on changes which would enable the Conference to adopt by consensus a convention in which all countries, including the United States, could participate.

113. The group of 11 "friends of the conference" had put forward in document WG.21/Informal Paper 21 and Add.1 proposals which, if adopted, would considerably improve Part XI, particularly with regard to the transfer of technology and the approval of contracts and plans of work. The proposals did not entirely coincide with the views of his delegation on those matters, but the document offered a good basis for negotiation. Moreover, those proposals failed to cover other matters in Part XI that were still of concern to his delegation, which continued to believe that matters concerning specific policies of the Council, the subject of article 162, paragraph 1, should be included in the consensus procedure.

*The meeting rose at 6 p.m.*

## 160th meeting

Tuesday, 30 March 1982, at 8.05 p.m.

*President: Mr. A. ARIAS SCHREIBER (Peru)*

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

1. Mr. ELLIOTT (Belgium), speaking on behalf of the European Economic Community and its 10 member States and referring to the report on the question of participation in the convention (A/CONF.62/L.86), thanked the President for his efforts to find ways of enabling international organizations to participate. The debate on that question centred on the participation of the European Economic Community and contacts between the various delegations had helped everyone to understand the problems better. The current text still presented difficulties for the Community, which would, however, in a spirit of compromise, raise only one.

2. The wording of article 4, paragraph 6, of the informal proposals (A/CONF.62/L.86, annex I) created great difficulties. Delegations would remember that it was the Com-

munity which had originally proposed a provision on national treatment. That provision was no longer necessary and could in fact lead to misinterpretations. The interests of parties to the convention were suitably safeguarded by the provisions of article 4, paragraphs 5 and 7. He therefore proposed, on behalf of the Community and its 10 member States, that article 4, paragraph 6, should be deleted.

3. Mr. HAYES (Ireland) said that one subject of most direct interest to his country, as a member of the European Communities, was that of the participation of international organizations in the future convention. His delegation fully endorsed what the previous speaker had said and, subject to adoption of the change suggested by him, the informal proposals should be included in the revised text of the draft convention. His delegation also favoured incorporating the draft decision and the draft resolution in annexes II and III, respectively, of document A/CONF.62/L.86, the resolutions on the Preparatory Commission and preparatory investment in annexes I