

# **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.161**

## **161<sup>st</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)*

that international customary law established, and the draft convention implied, a legal régime for the passage of warships through the territorial sea which conferred upon all coastal States the right to require prior notification or authorization. To make a more explicit reference to such a right in article 21 of the draft convention would be in effect to codify accepted and confirmed customary rules and would, moreover, offer the advantage of preventing possible incidents or legal disputes in the application of the convention. It was certainly not too late to improve the text of the draft convention.

33. Mr. VAN TONDER (Lesotho) expressed support for the informal proposals regarding participation in the convention, in the belief that they made a significant contribution towards improving prospects for the convention's being adopted by consensus. However, his delegation associated itself with the position adopted by OAU regarding the participation of national liberation movements. It also supported the proposals on the Preparatory Commission in annex I to document A/CONF.62/C.1/L.30 as a basis for consensus. He considered that the provisions relating to preparatory investments (A/CONF.62/C.1/L.30, annex II) improved the likelihood of a consensus, although he had certain reservations with regard to: the title of the resolution, which was restrictive in that it excluded other resources; the allowance made in paragraph 10, subparagraph (b), for the concept of flags of convenience; the failure to make adequate provision for the problem of land-based producers, including the failure to provide specific safeguards against the adverse effects of sea-bed mining on land-based producers of the same minerals; and finally the lack of any clear stipulation in paragraph 14 that the resolution would cease to apply on the date of entry into force of the convention.

34. The report of the Second Committee did not adequately reflect the concerns of participating countries. There was surely room for improvement in the draft articles which came within the terms of reference of that Committee. For example, the articles pertaining to land-locked countries and dealing with transit and sharing of the resources of the exclusive economic zone could be improved in order to make proper provision in the convention for the rights and interests of land-locked countries. Proposals might be submitted on the matter before the end of the session. The concept of the com-

mon heritage fund, on the other hand, could be viewed as a compromise solution to the problem of the participation of land-locked countries in the resources of the exclusive economic zone.

35. Mr. Han Si HAE (Democratic People's Republic of Korea) said that, in view of the consensus reached on the provisions of the draft convention, his delegation had opposed the reopening of negotiations on those provisions. It would spare no efforts to ensure rapid adoption of a comprehensive convention which would guarantee the effective exploration and exploitation of the sea and its resources as the common heritage of mankind for the benefit of all States, and particularly the developing countries. It therefore hoped that the convention would be adopted at the current session and signed by all States in Caracas in September 1982.

36. He appreciated the efforts made by the Chairman of the Second Committee to resolve the problems confronting that Committee during the first stage of the current session of the Conference. However, he felt obliged to draw attention to the important principle involved in the passage of foreign warships through territorial seas in the light of the need to find a generally acceptable way of ensuring the security of coastal States. It was evident that article 21 of the draft convention was not one on which a consensus had so far been reached through negotiations. He noted that the proposal (C.2/Informal Meeting/58/Rev.1) referred to in paragraph 6 of the report of the Chairman of the Second Committee (A/CONF.62/L.87) had been submitted by no fewer than 26 countries, and took the view that article 21 should be amended to accommodate the wishes of the majority.

37. He also supported the proposal made by Romania and Yugoslavia concerning article 62, paragraph 3 (C.2/Informal Meeting/72).

38. In conclusion, his delegation felt that national liberation movements recognized by the United Nations and regional international organizations should participate fully in the convention.

*The meeting rose at 9.30 p.m.*

## 161st meeting

Wednesday, 31 March 1982, at 10.15 a.m.

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

### Discussion of results of consultations and negotiations

1. Mr. CANDIOTI (Argentina) said that the proposals which the President had put forward in document A/CONF.62/L.86 contained many valuable elements but unfortunately the Argentine Government was not able to accept the wording of the draft resolution in annex III. It considered that the present transitional provision contained in document A/CONF.62/L.78<sup>1</sup> should be maintained.

2. Turning to the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30), he felt that the solutions proposed in annexes I and II constituted an important step forward and a basis for the elaboration of a generally

accepted convention. In that connection, his delegation fully endorsed the statement made by the representative of Peru at the 159th meeting on behalf of the Group of 77 and exhorted the President to begin new and intensive consultations in order to reach agreement.

3. With that aim in view, his delegation wished to make the following comments on annex II.

4. In paragraph 1 (a) the same date (1 January 1983) was established for both pioneer investors and developing States. He felt that in the case of developing States the date should be different.

5. In paragraph 1 (b) the incorporation of the new term "pioneer activities" was acceptable. However, it should be made clear that the term included typical activities of exploration and other necessary activities which, while going beyond the stage of exploration and without entering upon the stage of exploitation, could be described as feasibility studies.

<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).

6. The title of the resolution and paragraph 1 (d) referred exclusively to polymetallic nodules, without taking into account the other resources of the Area.

7. Paragraph 1 (e) established a maximum pioneer area of 150,000 square kilometres. Such an area did not have and had never had any objective justification and would appear to be linked only with the reduction of mining risks for the pioneer investor.

8. Paragraph 5 contained an obligation for the certifying States but provided no solution in the case of overlapping claims.

9. Paragraph 7 did not make it clear whether article 13 of annex III of the draft convention was applicable or not. Furthermore, the minimum sum to be invested annually would appear to be far from the standard of compliance laid down in annex III, article 17, paragraph 2 (c), regarding the "periodic expenditures . . . which are reasonably related to the size of the area . . . and the expenditures which would be expected of a *bona fide* operator . . ."

10. Paragraph 8 (a) appeared to make the granting of a contract of exploration and exploitation automatic. It should be clearly established that the Authority would proceed with such an approval in conformity with the convention. Furthermore, it was necessary to make quite clear that the reference to a contract of exploration and exploitation had been made to cover the case in which the exploration had not been finalized and that, on the assumption that that was the case, the plan of work to be approved would be solely one of exploitation.

11. Paragraph 9 would not be compatible with the provisions of article 151, paragraphs 2 (b) and 2 (c), of the convention. If, under paragraph 9, the pioneer investors exceeded in number the available production authorizations, the balance that had been achieved with such difficulty in article 151 would be upset to the detriment of the Enterprise, since priority would be given to the pioneer investors.

12. Paragraphs 10 (b) and (c) contained a practical solution but gave rise to the possibility that pioneer investors might operate under flags of convenience.

13. Paragraph 13 seemed to disregard the fact that the convention took precedence over the resolution in question. At least, it would be necessary to make it clear that the contents of paragraph 13 referred to the provisions of the resolution which, effectively, might be applicable, taking into account substantive and temporal factors.

14. Paragraph 14 created a legal uncertainty which it was necessary to avoid.

15. He wished to express his agreement with the appeal made by the President of the First Committee (A/CONF.62/L.91, para. 62) to the effect that every effort should be made to amplify the consensus which had so far been achieved. The Conference must make a special effort to achieve a universal treaty which was both a just and suitable instrument for channelling new forms of development co-operation within a framework of legal security.

16. With regard to the questions within the competence of the Second Committee, the discussion held and the report of its Chairman, Mr. Aguilar, clearly revealed that a few amendments should be made in the draft convention which, without disturbing its delicate balance, would improve the possibilities of its adoption by consensus. He wished to refer first to the proposal contained in document C.2/Informal Meeting/58/Rev.1 on the innocent passage of warships through the territorial sea. In his report, Mr. Aguilar had stated that, in the light of the discussions held at the three meetings over which he had presided during the present session, that proposal, like nearly all the others, did not meet the con-

ditions laid down in document A/CONF.62/62<sup>2</sup> for being incorporated in the text. However, it should be borne in mind that that conclusion was based only on the results of the three meetings in question. The proposal put forward in the informal document had been repeatedly discussed in a number of sessions and had clearly enlisted majority support, whereas the present text had not given rise to a consensus.

17. It was therefore necessary to adjust Part II, section 3, of the draft convention to ensure that coastal States were explicitly empowered to require previous notification or authorization for the innocent passage of warships through the territorial sea. Such power was implicit in the present draft and was recognized in present international law. His delegation therefore hoped that the President of the Conference and the Chairman of the Second Committee would encourage efforts to improve the text and avoid a breakdown at the present important point in the discussion.

18. He then turned to the proposal contained in document C.2/Informal Meeting/54/Rev.1 which referred to article 63, paragraph 2, of the draft convention. That amendment was justified for the following reasons. The treatment of the conservation of living resources in the present draft was deficient, because it provided for a system that was less effective for the adjacent zone and the exclusive economic zone than for the high seas. Such a difference not only was unjustified but weakened the obligation of States to co-operate in the adoption of conservation measures precisely in a maritime area where such co-operation was essential for the rational exploitation of the resources in question. The need for such co-operation was derived from the fact that the stocks in the zone in question constituted a biological unity. Experience had shown that over-exploitation of such stocks in areas situated beyond the exclusive economic zone would involve drastic reductions in the biomass of such stocks and consequently a severe reduction in yield both within and outside the exclusive economic zone. In that way, the rights which the convention reserved for the coastal State would become illusory and the international community would be deprived of a valuable resource.

19. The affirmation of the great fishing Powers that the proposal was designed to extend the jurisdiction of the coastal States beyond the limit of 200 miles was totally lacking in foundation. The freedom of fishing which the draft convention guaranteed equally for all States would in no way be reduced by the introduction of the amendment. Nor could it be seriously maintained that the proposal affected the delicate balance achieved in the draft convention. It was simply aimed at remedying a deficiency in the text and a lack of coherence and parallelism between various articles dealing with similar situations. The incorporation of the amendment in the draft convention would substantially improve the prospects of consensus. Both with respect to the proposals put forward by the Argentine delegation and the other proposal put forward by Mr. Aguilar in paragraph 8 of his report, there was opposition by certain delegations. But at the present stage of the Conference it was not acceptable to adopt a decision that differed from proposals which had enjoyed such substantial support. To do so would create an unjust situation which his delegation could not accept.

20. His delegation had taken note of the drafting changes suggested by the Chairman of the Third Committee in document A/CONF.62/L.88 and was particularly glad to express agreement with the amendments proposed to articles 212 and 216 so as to make the terms and concepts of the future convention on the law of the sea compatible with the corresponding provisions of the Chicago Convention of 1944 on International Civil Aviation.<sup>3</sup>

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

<sup>3</sup> United Nations, *Treaty Series*, vol. XV, No. 102, p. 295.

21. With regard to the relationships between the law of the sea convention and other general conventions, his delegation felt that article 311 of the draft convention and the Vienna Convention on the Law of Treaties<sup>4</sup> of 1969 were suitably complementary. It also felt, in view of the breadth of the questions which, if only tangentially, were dealt with in the draft convention, article 311 and the Convention on the Law of Treaties would provide the necessary help in answering the many questions which might arise, for example, in relationships with air law, which was already specifically regulated in the Conventions of Chicago, Tokyo, The Hague, Montreal and so on.

22. Finally, with regard to the work of the Drafting Committee, his delegation would take a special account of the recommendations put forward by its Chairman in document A/CONF.62/L.89. His delegation would continue to collaborate fully with the work of the Drafting Committee to which it assigned the greatest importance.

23. Mr. KEITA (Mali) said that, as far as preparatory investment protection and the Preparatory Commission were concerned, his delegation fully endorsed the decisions and positions taken by the group of African States and the Group of 77.

24. As for participation in the convention, it agreed with the position of the Group of 77 concerning international organizations. No member of a regional organization, which was not a party to the convention, should, directly or indirectly, derive benefit from it. He warned against attempts by certain countries to frustrate the work of the Conference through regional agreements and unilateral legislation which would give them the lion's share of the benefits. With regard to the participation of national liberation movements, his delegation had always felt that attempts to prevent the participation of those movements on the grounds that such participation would result in politicization were quite unjustified. When any Government sent envoys to any international conference or organization, politicization could not be excluded. There was no economic, moral or legal reason to reject the participation of national liberation movements. The exploration, exploitation and sharing of the common heritage of mankind should not exclude any nation. His delegation therefore supported the participation of all national liberation movements recognized by the United Nations both at the signing of the final act and in the convention. They should be on an equal footing with the Member States of the United Nations, which they would eventually become.

25. He called upon all coastal States to respect the commitments undertaken under articles 124 to 132 concerning the right of access of land-locked States to and from the sea and freedom of transit, bearing in mind the heavy burden which customs duties, taxes and other charges placed upon land-locked States such as his own.

26. With regard to the compensation fund, he hoped that there would be equitable compensation for the land-based producers of all those minerals which would be exploited in the seas.

27. Finally, he said that, precisely because of their unfavourable position, the land-locked and geographically disadvantaged States should be given greater representation in the Council than that provided for under article 161, paragraph 2 (a). That could be achieved by increasing the number of members to be elected from among developing States, representing special interests, from six to eight.

28. Mr. SHEN Weiliang (China) said that the provisions of the draft convention on the passage of foreign warships

through the territorial sea lacked clarity and needed to be improved. Twenty-seven States, including China, had submitted to the Second Committee a joint proposal (C.2/Informal Meeting/58/Rev.1) which called for an additional paragraph being added to article 21 stipulating that a coastal State had the right to require prior authorization or notification for the passage of foreign warships through the territorial sea. That proposal was in full conformity with the principles of international law. Although widely supported, it had met opposition from a small number of States which were unable to present tenable arguments or legal grounds for their position. His delegation hoped that an appropriate solution would be worked out and the necessary amendments made to the present draft.

29. The definition of the continental shelf, in article 76 of the present draft convention, was based on the principle of natural prolongation and the continental shelf extended to the outer edge of the continental margin including the shelf, the slope and the rise. According to scientific and geological data, the features of the continental shelf and the continental margin varied widely from place to place. Consequently, article 76 could only be regarded as a general provision on the definition of the continental shelf and there should be some degree of flexibility so as to make it generally applicable to continental shelves with different structures throughout the world. The Chinese delegation had submitted an informal amendment (C.2/Informal Meeting/72) to the Second Committee, suggesting certain textual changes to be made to article 76 to make that point clear. That amendment would make the definition of the continental shelf more precise and more scientific. Since the proposal had received support from quite a number of States in the Second Committee, his delegation hoped that the Collegium would give it serious consideration.

30. Article 309 of the draft convention provided that no reservations or exceptions might be made to the convention unless expressly permitted by other articles of the convention. However, as the new convention covered a wide range of complicated problems, it was very difficult for the final draft to accommodate fully the interests of various States under different conditions. In order that the convention as a whole might be accepted by as many States as possible and that it might enter into force at an early date, it was proper to permit limited reservations, while maintaining the principles and necessary integrity of the convention as a whole.

31. His delegation felt that a proper solution should be found to the problem of the participation of national liberation movements.

32. As a result of the unwillingness of the United States delegation to abandon its request for major substantive amendments to Part II, the Conference was confronted with certain difficulties. The United States approach was unrealistic and unwise. His delegation hoped that the United States delegation would consider all the efforts that were now being made to break the deadlock and would not insist on making unrealistic changes in the major principles of the present draft convention and would co-operate and consult in good faith with all other States so as to bring about the successful conclusion of the current session of the Conference.

33. Mr. PERIŠIĆ (Yugoslavia) said that his delegation maintained that document A/CONF.62/L.78 was a negotiated text into which no substantial amendments that would affect the balance achieved and disrupt the construction of the package as a whole could be introduced.

34. Turning to the proposed draft resolutions on the Preparatory Commission and the treatment of preparatory investments (A/CONF.62/C.1/L.30, annexes I and II), he said that they were both interim in character until the convention entered into force and should both be accepted in the form of a resolution within the framework of the final act. He

<sup>4</sup> See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

emphasized, however, that while the Preparatory Commission was a necessity which was generally considered appropriate, the treatment of preparatory investments was an important concession made by developing States to a few developed States and their companies. It had been accepted in order to direct the development of the exploration of the resources in the Area towards the goals of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction<sup>5</sup> and for the benefit of mankind as a whole, as well as to stop trends towards unilateral activities and exploitation outside the convention and the international régime.

35. Paragraph 4 of the draft resolution on the Preparatory Commission was an appropriate solution of the decision-making problem, while paragraph 5 (h) was necessary in connection with the resolution of preparatory investments and paragraph 5 (i), the result of consultations with the developing land-based producers, was a necessary way for enabling the Preparatory Commission to propose and undertake all measures including, in particular, the establishment of a compensation fund as provided for in article 151, paragraph 4. He reiterated the importance of the rule providing for the meetings of the Preparatory Commission to be held at the site of the Authority, since that was the only and the best means for preparing the functioning of the Authority. The draft resolution governing preparatory investments in pioneer activities relating to polymetallic nodules was an improved basis for reaching consensus on the subject. His delegation did, however, feel that the resolution should refer to preparatory investments in pioneer activities in the exploration of all resources of the ocean floor and not only to polymetallic nodules. It also considered that there should be no time-limit for applications by potential developing pioneer investors. Paragraph 13 should be redrafted or deleted since, as it stood, it was unclear and was not applicable to the Authority. Paragraph 14 could cause many difficulties and his delegation felt that it should be replaced by paragraph 14 of the proposal TPIC/3 of the Group of 77.

36. With regard to the report of the President on the question of participation in the convention (A/CONF.62/L.86), his delegation supported the position of the Group of 77 presented by its Chairman at the 159th meeting that the issues of participation should be resolved as a whole and that the informal proposal offered a framework within which it was possible to reach a comprehensive compromise solution. His delegation would have preferred that all States members of an international organization would have to become parties to the convention before the organization could deposit its instrument of formal confirmation or accession. The change in the present article 4, paragraph 7, of providing for the supremacy of the obligations of an organization under the convention over its obligations based on its internal law, was an appropriate one. With regard to national liberation movements recognized by the United Nations, he reiterated his delegation's support for the proposals of the Group of 77 concerning the question of the full participation of liberation movements. His delegation felt that some improvements to all three annexes to document A/CONF.62/L.86 were necessary and could be achieved through continuing efforts to enable the Collegium to draft a generally acceptable solution on participation in the convention.

37. He said that the report of the Chairman of the Second Committee (A/CONF.62/L.87) very accurately reflected the work of the Committee during the current session. He had correctly pointed out that there was a real consensus among all delegations on the need to preserve all the basic elements of those parts of the convention within the competence of the Committee. Nevertheless, several delegations had submitted

informal suggestions for changes and the report accurately reflected the degree of support they had received. With regard to the suggestion submitted by Romania and Yugoslavia contained in document C.2/Informal Meeting/70, he felt that, on the basis of the wide support it had received, the Collegium could insert it in the convention in accordance with the requirements established in document A/CONF.62/62.

38. He expressed his appreciation of the efforts made and the results achieved by the Drafting Committee. He hoped that the Conference would be able to devote its attention in the third stage to the work of the Drafting Committee in order to enable it to accomplish its tasks. He noted that there were unsolved matters relating to drafting in connection with other parts of the draft convention: some drafting amendments in relation to Third Committee matters had been indicated in document A/CONF.62/L.88 and the Drafting Committee had earlier been entrusted with a number of suggestions which the Second Committee had qualified as proposals for changes of a drafting nature. His delegation was especially interested in the suggested drafting improvement to article 36.

39. Mr. POSSER DA COSTA (Sao Tome and Principe) said that, faithful to the principle that the resources of the Zone constituted the common heritage of mankind, his delegation wished to reaffirm its strong support for equitable distribution of the resources of the sea and the formulation of balanced terms to that end. The compromise reflected in the part of the convention already approved was regarded by his delegation as an acceptable balance, and it therefore opposed any attempt to reopen negotiations on that part. Document A/CONF.62/L.86 constituted an improved basis, inasmuch as it reflected a consensus on such a delicate question as that of participation. His delegation had misgivings concerning the possibility that the wording proposed in article 2 of annex IX might offer States members of an international organization which was not party to the convention an opportunity to enjoy the benefits deriving from it.

40. With regard to national liberation movements recognized by the United Nations and by intergovernmental regional organizations concerned, he believed that they should enjoy full and effective representation on the same footing as States. In his delegation's view, they were the legitimate representatives of their peoples struggling for independence and dignity. Some of them were already full members of intergovernmental regional organizations. It should be borne in mind that the convention would put into application new norms of international law.

41. With regard to the protection of preparatory investments and the establishment of the Preparatory Commission, he supported the comments made by the Chairman of the Group of 77 at the 158th meeting of the plenary on the fact that document A/CONF.62/C.1/L.30 offered a framework for the establishment of a régime acceptable to all. However, the title of the resolution was too restricted, inasmuch as it referred only to polymetallic nodules, which was contrary to the notion of resources contained in article 133 of the convention.

42. Regarding annex II, his delegation had difficulty in supporting paragraph 8 (a) of the resolution, because the way in which it was drafted presupposed automatic approval of the plan of work by the Authority, which reduced the role of that organ to a merely administrative one. It should be drafted in such a way that the Authority could analyse the application in accordance with the rules laid down in the convention.

43. Paragraph 10 (b) did not prohibit a pioneer investor from changing his nationality. In his delegation's view, that favoured the "flag of convenience". That provision should, therefore, be deleted.

44. His delegation had difficulties in accepting paragraph 13, because the Authority was to be governed by the norms of the convention and not those of the resolution. Paragraph 14 was

<sup>5</sup> General Assembly resolution 2749 (XXV).

not sufficiently clear and should be replaced by paragraph 14 of document TPIC/3.

45. His delegation agreed, in the main, with the resolution on the establishment of the Preparatory Commission. However, it shared the opinion that a special commission, such as that provided for in paragraph 8 of the resolution, should be established with the purpose of undertaking studies leading to the establishment of a compensation fund for land-based producers among developing countries. It was necessary also to protect the developing countries from deleterious effects on their economies from activities in the Zone.

46. With regard to questions within the area of competence of the Second Committee, he stressed the fact of the archipelagic nature of his country. Some countries interpreted his country's position and that of the sponsors of the proposal contained in document C.2/Informal Meeting/58/Rev.1 as prejudicial to the balance established so far in the draft convention. He did not intend to call that balance in question. However, the idea of balance should not prevail with regard to the questions on which the Conference had not yet managed to reach a consensus. Article 21 was among those questions. On many occasions, his delegation had launched an appeal to the countries which opposed its proposal for a joint search for a wording acceptable to all parties concerned. In addition to that proposed in document C.2/Informal Meeting/58/Rev.1, his delegation had submitted a number of other proposals, and in spite of the opposition which it had encountered it was still ready to hold consultations on that question.

47. The report submitted by the Chairman of the Second Committee did not give a full account of what had happened at the three informal meetings of that Committee. Although a consensus had not been reached for inclusion of his delegation's proposal in the text of the resolution, in accordance with the provisions of document A/CONF.62/62, the Chairman of the Second Committee, unfortunately, had forgotten to mention that his delegation's proposal had gained the support of a large number of delegations and that the majority of the members of the group of African States had supported the proposal aimed at guaranteeing the security of the African States.

48. Since his country was an archipelagic State, the presence of a warship equipped with sophisticated technological devices in its archipelagic waters without its prior knowledge constituted a great danger to its security and a threat to its sovereignty.

49. The present text of the draft convention recognized the right of coastal States to enact national legislation to regulate innocent passage of warships in their territorial waters, with a view to protecting their security, which constituted an essential element in the definition of innocent passage. His delegation's desire for an amendment to article 21 was prompted solely by a desire to avoid possible disputes in the future regarding interpretation of the convention. His delegation would like consultations to be held with a view to arriving at a compromise formula acceptable to all.

50. With regard to the proposal to amend paragraph 2 of article 63, contained in document C.2/Informal Meeting/54/Rev.1, of which his delegation was a sponsor, he wished to reaffirm the position adopted by his delegation at Geneva in 1980. For Sao Tome and Principe, the conservation of stocks of fish in the exclusive economic zone and in the sector adjacent to that zone was of extreme importance. The resources of its exclusive economic zone, in particular fish, represented for his country a source of wealth and a prop for its extremely fragile economy. His delegation, therefore, appealed once again to those delegations which opposed its proposal to show moderation so that consultations might be held on the subject.

51. The articles of the convention on delimitation of the territorial sea, the exclusive economic zone and the continental

shelf met with his delegation's approval. They represented a successful balance resulting from arduous negotiations. His delegation, therefore, categorically opposed the reopening of any debate on those articles.

52. His delegation hoped that the current session would be the final session of the Third United Nations Conference on the Law of the Sea and that the Conference would achieve the end proposed at Caracas in 1979, which would contribute to the establishment of a new stage in relations among States for the establishment of a new international economic order.

53. Mr. BOS (Netherlands) said that his delegation attached great importance to the conclusion of a legal régime of the seas workable in the present-day world and accepted by all. During the last session at Geneva, his delegation had stated that effective international co-operation and organization and special protection and promotion of the interests of the less developed countries were the keys to the establishment of a régime of the sea as a shared resource of all countries. The Conference had gone a long way towards producing a framework in which those ideas could be implemented. At the same time, it had emphasized that the numerous provisions as they now stood in the draft convention were not necessarily the only means of achieving its aims. It had recognized that improvement of the text within certain limits remained possible. The Conference must not lose sight of that fact.

54. Part IX was still an unfinished part of the package which the Conference was bound to produce. It was necessary to find the middle way which would safeguard the real interests of the developing States without sacrificing the real interests of the industrialized States. In view of that necessity, the head of the Netherlands delegation, in his personal capacity, had collaborated in the discussion which had led to the introduction of document WG.21/Informal Paper 21 and Add. 1. That document must be seen as an effort to try to address most of the concerns of all interested parties. His delegation would have liked to explore whether a compensation scheme might have been an acceptable alternative for the production limitation formula. If the effort of the friends of the Conference had nevertheless failed, it should be made clear what the defects were, and delegations should keep trying to find acceptable solutions before they reached the next phase of their proceedings.

55. As far as the Second Committee was concerned, his delegation supported the conclusions contained in the report of its Chairman (A/CONF.62/L.87) that the only proposal which met the requirements established in document A/CONF.62/62 was that submitted by the United Kingdom (C.2/Informal Meeting/66) concerning article 60, paragraph 3, on the removal of abandoned structures.

56. With regard to the President's report on participation in the convention (A/CONF.52/L.86), his delegation's position had already been explained by the representative of Belgium, speaking at the 156th meeting, on behalf of the 10 States members of the European Economic Community. He commended the President's tireless efforts in presiding over the consultations on that subject and was confident that a satisfactory solution would be arrived at. With regard to annex II of the President's report, any further demands would create additional difficulties for reaching a consensus on that part.

57. With regard to the proposals put forward in document A/CONF.62/C.1/L.30 and the draft resolution contained in annex II, governing preparatory investment in pioneer activities relating to polymetallic nodules, the basic objective of such a resolution should be adequate protection of States, State entities or private enterprises which had already invested substantial amounts of money in the development of deep sea-bed mining in order to ensure sustained investment and eventual production of minerals from the sea-bed. That was not only in the interest of the pioneer investors them-

selves but also in that of the Enterprise, developing countries and the development of the resources of the area for the benefit of mankind as a whole. In view of that objective, it might be questioned whether the definition of pioneer investor in paragraph 1 (a) of the draft resolution was not too wide and might give rise to possible and justified conflicts of overlapping claims.

58. The draft resolution left it uncertain what would happen in the unfortunate event that the entry into force of the convention was considerably delayed. Moreover, the application of the provisions of the draft convention, which depended largely on the adoption of relevant rules and regulations, created insecurity with regard to the obtainment of a production authorization by a registered pioneer investor. With regard to the registration of pioneer areas, the role of the Preparatory Commission should be as automatic as possible. His delegation welcomed the French proposal in document TPIC/4 concerning facilitation of an early and effective establishment of the Enterprise.

59. If an adequate solution could be found for those issues, a very important step would have been made in the direction of the adoption of a convention acceptable to all. His delegation was at the President's disposal for further efforts to achieve a consensus.

60. Mr. BERG (Norway) said that the draft convention was an impressive achievement. It contained a series of innovative approaches and legal concepts for the resolution of conflicting legal, economic and political interests between the users of the world's oceans.

61. After almost a decade of intensive negotiations, the Conference was now approaching its conclusion. The first stage of the final session was completed, and the Conference was entering the next stage, which, in accordance with the programme of work, should lead to the adoption of the convention by the end of April.

62. While that prospect was a cause of joy for all, he regretted to have to observe that there were formidable problems ahead. In spite of considerable efforts undertaken by the President and by participating delegations, it had not been possible to resolve the issues raised by the United States (WG.21/Informal Paper 18) and supported to a varying degree by major Western European countries and Japan.

63. His delegation would have been prepared to accept the convention as it stood, as it had clearly stated on a number of occasions. Nevertheless, it saw justification in some of the amendments proposed by the United States delegation, not least the need to secure the Senate's approval of a final convention. His delegation fully understood the apprehensions of the developing countries on the comprehensive changes suggested at the current late stage.

64. A group of like-minded industrialized countries, including Norway, had attempted to set the negotiating process in motion by submitting a series of proposals which could constitute a constructive basis for compromise solutions. He regretted, however, to have to observe that no real negotiations had taken place on those issues during the first three weeks of the session.

65. The Norwegian Government regretted that development and expressed its grave concern with regard to the implication. At present, there was a grave risk that the Conference might have to proceed to the adoption of the convention by voting, even if such a convention, as a consequence, would not be universally accepted. In his Government's view, a convention without the participation of the United States, the United Kingdom, France, the Federal Republic of Germany and Japan would not be effective, especially with regard to those parts of the convention which had as their objective the realization of the concept of the common heritage of mankind. Furthermore, such a development

would create uncertainties as to the legal status governing the sea and would constitute a grave risk that individual countries would implement the convention only partially. That would increase the possibility of new international confrontations and conflicts. Norway was also seriously concerned by the negative effect which a failure to reach a consensus would have on the North-South relationship in general and on the future role of the United Nations as a machinery for international negotiations.

66. His delegation recognized that there was no easy way out of the predicament. Concessions would have to be made by all parties concerned. In the name of the Norwegian Government, he appealed to all parties to enter into urgent negotiations with a view to finding compromise solutions to outstanding issues in Part XI. He hoped that the formalities of the programme of work would not be permitted to hamper future efforts in a search for compromise formulae within the time frame established for the current session. His delegation would continue to contribute actively during the remaining part of the current session, in an endeavour to ensure that the convention was adopted by consensus.

67. With regard to the report submitted by the Chairman of the Second Committee, his delegation agreed with his assessment that the delicate balance achieved in the present text should not be disrupted. However, it endorsed the Chairman's observation that the only proposal which met the requirements established in document A/CONF.62/62 was the proposal concerning removal of installations, contained in article 60, paragraph 3.

68. Mr. BRENNAN (Australia) said that for Australia the overriding objective, shared by many delegations, was the early adoption of a comprehensive and widely accepted convention, a convention which would rewrite the international law of the sea in more equitable terms, a convention which met Australia's own substantial interests. Many of Australia's specific interests were met in the draft convention, which was why it was so concerned that nothing should be done to upset the fundamental balances which had been so painstakingly negotiated. That was not to say that adjustments could not or should not be made to the text if to do so would resolve the difficulties of some delegations. There were clearly a number of issues for which solutions would have to be found if the overriding objective of a comprehensive and widely accepted convention was to be achieved.

69. His delegation supported the inclusion in the convention of clauses which would prevent States from using unfair economic practices which might cause or threaten to cause material harm to the economic interests of another State. That was an important Australian objective. It was a matter of particular interest to land-based producers but not to them alone. The Enterprise might have difficulty in securing markets if major consumers were to seek self-sufficiency in metals through subsidization of sea-bed mining. The production ceiling was intended to be a phase-in mechanism, and it would last only for the first 20 years of commercial production. An unfair practices clause would be a permanent element in the convention and a lasting protection to land-based producers and the Enterprise.

70. His delegation welcomed the report of the co-ordinators of the working group of 21 on the report of the First Committee (A/CONF.62/C.1/L.30). Annex 1 of the report on the Preparatory Commission was improved by the inclusion of a provision, contained in paragraph 4 of the draft resolution, that the rules of procedure of the Conference should apply with respect to the adoption of the rules of procedure of the Commission. Its function had also been adjusted to take account of the treatment of preparatory investments. His delegation supported the revised draft resolution. It also appreciated the efforts of the Government of Jamaica to

prepare the headquarters for the International Sea-Bed Authority.

71. His delegation also welcomed the initiative of the coordinators with respect to the text of a draft resolution governing preparatory investment in pioneer activities. The draft further developed ideas that had been contained in various earlier drafts, including that proposed by a group of 10 heads of delegations (TPIC/5). He hoped that it would contribute to a consensus on the subject. He noted that the resolution would remain in force for five years, after which it would lapse if the convention had not then entered into force. Such a provision could create problems for a State which had sponsored a pioneer investor and which had ratified the convention. It might need to be carefully considered from that point of view and might need to be harmonized with the provisions regarding the termination of a Preparatory Commission.

72. With regard to the area of competence of the Second Committee, it was clear that there was wide support for the United Kingdom proposal (C.2/Informal Meeting/66) to amend article 60, paragraph 3. His delegation strongly supported that amendment, believing that it provided an equitable balance between the interests of the coastal States and the interests of other lawful users of the seas. He noted with satisfaction that the Chairman of the Second Committee, in his report to the plenary (A/CONF.62/L.87), stated that the United Kingdom proposal met the requirements in document A/CONF.62/62.

73. Australia was a sponsor of document C.2/Informal Meeting/54/Rev.1. The discussions which had taken place in the Second Committee and informal negotiations had demonstrated widespread dissatisfaction with article 63, paragraph 2, as it stood and wide support for a change to that paragraph along the lines of the proposal which his delegation had sponsored. It should be emphasized that acceptance of that proposal would not involve an extension of coastal State jurisdiction.

74. His delegation could not support amendments to article 21 (C.2/Informal Meeting/58/Rev.1). If the traditional right of innocent passage for warships was subject to the authorization of a coastal State, it would no longer be a right but merely a facility to be granted at the discretion of the coastal States. Similarly, a requirement of prior notification could be used to impede or suspend lawful innocent passage.

75. Great care should be taken not to upset the careful balance that had been achieved in the Second Committee text after exhaustive negotiations. He therefore endorsed the comment made by the Chairman of the Second Committee in his report to the plenary (A/CONF.62/L.87) on the other proposals which had been discussed in the Second Committee.

76. On the question of participation in the convention, he expressed appreciation to the President for the way in which he had conducted the negotiations and consultations in an atmosphere free of polemic. His delegation wished to see the inclusion in the convention of provisions which would enable "self-governing associated States" and appropriate international organizations, such as the European Economic Community, to become parties to the convention. With regard to self-governing associated States, he recalled that Australia had co-sponsored document FC/10 and had supported document FC/19 and that both types of self-governing associated States referred to in those proposals had been considered in document FC/26 to meet the basic criteria which the President had laid down to govern the question of participation in the convention.

77. The proposals submitted by the President in document A/CONF.62/L.86 on the participation in the convention of international organizations, self-governing associated States and national liberation movements generally met Australia's

interests, and it supported them. Australia also endorsed the approach taken in that document regarding the so-called "transitional provision". He noted that the representative of Belgium, speaking on behalf of the European Economic Community (156th meeting), had expressed concern about some aspects of the President's proposals on the participation of international organizations, and he hoped that it would be possible to find consensus solutions to those difficulties in the time remaining.

78. With regard to the letter dated 26 March 1982 from the Chairman of the Third Committee to the President of the Conference and the Chairman of the Drafting Committee (A/CONF.62/L.88), his delegation strongly felt that those proposed changes to the draft convention should be considered carefully by the Drafting Committee.

79. If the common objective of a convention adopted by consensus was to be achieved, there would have to be intensive negotiations between the United States and the other Western sea-bed miners, on the one hand, and the Group of 77, on the other. That would require an agreed agenda. He hoped that the paper circulated by 10 heads of delegation (TPIC/5) might have a prominent place in any such negotiations. Proposals had been made for the addition of other items. In their totality, they were manifestly excessive and would have to be scaled down.

80. If the Conference were to break up without having negotiated the matters standing between it and consensus or to break up in an atmosphere of allegations that adequate opportunity for negotiations had not been given, it would not be possible to explain to posterity what had happened.

81. If some delegations believed that they had not been heard or that due process had not been followed, there would be unhappy implications for the convention for years to come, unhappy implications which would not be dissipated by changes in government and which would spread to many capitals, not to one alone. Nor would the consequences of such a situation be confined to the implications for the convention on the law of the sea; they would spill over into all the activities of the United Nations and even more widely.

82. It was essential to act now. To defer that question until some later stage when it would have to be addressed through the medium of formal amendments to the text would be highly dangerous. He appealed to all delegations to approach the question of an agenda for discussion of Part XI in a spirit of statesmanship, even of generosity.

83. Mr. KOCHUBEY (Ukrainian Soviet Socialist Republic) said that his delegation was gratified that the Conference was carrying out the programme of work for the eleventh session decided upon in 1981. The first three weeks had been put to good use, with constructive consultations being held on the few outstanding questions. The Conference had now gone as far as it could towards reaching a commonly acceptable compromise on those questions and that compromise should become part of the "package" containing the whole range of issues dealt with by the convention.

84. He was disappointed that the United States, despite its year-long "review" of the draft convention, was still unable to put forward any realistic or constructive proposals. The "Green Book" submitted by that delegation (WG.21/Informal Paper 18) violated the agreements reached and, if accepted for discussion, would set the Conference back many years. It would be hard to find even one delegation for whom the "Green Book" would be acceptable.

85. Turning to the draft resolution establishing the Preparatory Commission, he said that his delegation believed that the Preparatory Commission would be an important link in the system worked out at the Conference and should serve as a powerful means of ensuring the entry into operation of the Authority, the Enterprise and the Tribunal with the lowest



possible expenditure on the part of the United Nations. Document A/CONF.62/C.1/L.30 correctly reflected the negotiations on the question within the working group of 21 and the majority of its provisions regarding, in particular, the membership of the Preparatory Commission, its functions, purposes and powers, as well as the way it should be financed, were, on the whole, balanced. His delegation could go along with the formulation in paragraph 4 of the draft resolution which stated that the rules of procedure of the Conference should apply *mutatis mutandis* with respect to the adoption of the rules of procedure of the Commission. In the light of that provision, the specific procedure for adopting decisions on questions of substance should be determined by the Commission on the basis of consensus, while, in exceptional cases, when no consensus could be achieved, the procedure would be determined by a two-thirds majority. As long as such an understanding of the procedure for adopting draft rules, regulations and procedures for the activities in the Area was reflected in the memorandum of the Collegium, his delegation was prepared to regard paragraph 4, like the draft resolution as a whole, as an acceptable compromise.

86. With regard to preparatory investment protection, he said that the draft resolution contained in annex II of document A/CONF.62/C.1/L.30 essentially contained the views expressed during negotiations on the question in the group of 21. It was therefore broadly acceptable, although certain of its provisions might be improved. He stressed that neither of the two draft resolutions in document A/CONF.62/C.1/L.30 satisfied his delegation entirely. However, aware that work on the convention had reached its final stage and endeavouring to act in the spirit of co-operation, his delegation supported that document as a whole and considered that it should be seen as a part of the compromise, so that the draft convention itself would not be changed.

87. The desire of the majority of participants in the Conference to preserve the compromise draft convention was clearly illustrated in the report of the Chairman of the First Committee (A/CONF.62/L.91), which stated that the proposal of a number of countries to review the provisions concerning the composition of the Council and the decision-making mechanism within it had not been supported and could not be the subject of a consensus. His delegation felt that such proposals could only undo agreements reached on the entire text of the convention and must therefore be rejected by the Conference.

88. Turning to the report of the President concerning participation in the convention (A/CONF.62/L.86), he said that there was broad agreement among the overwhelming majority of delegations that participation in the convention on the law of the sea should be open to national liberation movements recognized by the United Nations and to appropriate regional intergovernmental organizations. The declaration that the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind would lose part of its meaning if nations fighting for national liberation could not enjoy their rightful share of that heritage. His delegation therefore shared the view of the Group of 77 that national liberation movements must have the opportunity of becoming full participants in the convention, and not simply observers in the various bodies to be established.

89. His delegation continued to believe that the transitional provision should remain where it was previously, following article 320 of the draft convention.

90. With regard to the participation of international organizations, to which various States members had transferred competence over matters governed by the convention, his delegation could, with certain reservations, agree with the formulation whereby they could participate only where the majority of their States members were parties to the convention. It felt that formulation must also apply in cases of

denunciation, something which was not provided for in the draft proposed. As the draft stood, an international organization could continue to participate even when only one of its member States remained a party to the convention.

91. Although it was not happy with a number of provisions, his delegation could, in a spirit of compromise, agree to maintain the existing text with the changes contained in the report of the President. He stressed, however, that his delegation was prepared not to insist on the insertion of its amendments only if other delegations did likewise. That was particularly relevant to those delegations who continued to insist on introducing changes to article 21 and other provisions, which had long become an inalienable part of the compromise agreement reached. In that connection, he fully supported the views and conclusions contained in the report of the Chairman of the Second Committee.

92. His delegation noted with satisfaction the letter of the Chairman of the Third Committee (A/CONF.62/L.88) containing drafting changes.

93. Finally, he expressed the hope that the United States and certain other Western Powers would heed the voice of the majority and stop their unjustified attempts to gain unilateral privileges at the expense of the rest of the world. The adoption of a convention on the basis of principles of equality would open new horizons for international co-operation for the good of all countries and peoples of the world and would serve to strengthen peace and international security. It was the duty of the participants to do all in their power to enable the Conference to end with the adoption of such a convention.

94. Mr. NAIK (Pakistan) said that, with regard to the report of the Co-ordinators of the working group of 21 contained in document A/CONF.62/C.1/L.30 and setting forth proposals on the establishment of the Preparatory Commission and the governance of preparatory investments in pioneer activities, the Chairman of the Group of 77 had already expressed the views of the Group of 77 on those two issues at the 158th plenary meeting. His delegation subscribed fully to those views. The draft resolution on the establishment of the Preparatory Commission provided an excellent basis for reaching a consensus. He suggested that paragraph 8 of the resolution contained in annex I of document A/CONF.62/C.1/L.30 should be reformulated and clarified. It would be the responsibility of the Preparatory Commission to take the necessary measures to ensure the entry into effective operation of the Enterprise, and the special commission for the Enterprise would report to the Preparatory Commission regarding the work entrusted to it.

95. The question of the venue of the meetings of the Commission had not been discussed exhaustively in the Preparatory Commission. In his delegation's view, in order to reduce the financial burdens both on the United Nations and on members of the Preparatory Commission, the Commission should hold its meetings at United Nations Headquarters, preferably at New York. That would ensure that the Secretary-General of the United Nations was better able to make available to the Preparatory Commission the necessary facilities and secretariat services as required under paragraph 14 of the draft resolution.

96. The draft resolution governing preparatory investments contained in annex II of document A/CONF.62/C.1/L.30 contained a number of positive elements and provided the necessary framework for carrying out pioneer activities. Those elements included, *inter alia*, the following: only signatories to the convention might apply to the Commission on their own behalf and on behalf of any of their entities for registration as pioneer investors; the essential requirement that the resolution should be compatible with the draft convention had not been lost sight of; an investor might be registered in respect of only one area; the resolution limited the activities of the

investor to exploration only and did not allow commercial production before the entry into force of the convention and the approval of the plans of work and product authorization by the Authority. Certain issues, however, still needed to be rectified. The size and the area should be determined on the basis of objective criteria to be determined by the Preparatory Commission. Paragraph 2 (b) should be reworded and should be placed after paragraph 3 (b). If applicants were to undertake exploration in the area, as envisaged in the resolution, they should be required to pay an amount of \$US 1 million each year to the Preparatory Commission with respect to the areas allocated to them as envisaged in the financial terms of contract contained in the draft convention. His delegation had been informed during the negotiations by the industrialized countries that expenditures ranging up to \$US 200 million would be undertaken during the exploratory phase. As such, the floor of expenditure to be incurred, namely, \$US 1 million each year, with respect to the pioneer area appeared to be extremely low and should be proportionate to the exploratory costs expected to be incurred by the pioneer investors. He proposed that the expenditure should not be less than \$US 20 million each year with respect to the pioneer areas. The meaning of the second sentence of paragraph 2 (b) was not clear, and he suggested that it should be clarified or deleted. The second sentence of paragraph 8 seemed to suggest that, while the applications for a plan of work for exploration and exploitation would be made by the pioneer investors in accordance with the convention, the Authority would automatically approve such applications. He did not believe that such had been the intention of the drafters of the resolution, and he proposed that the second sentence of paragraph 8 should be revised to include a phrase to the effect that such applications would be approved in accordance with the relevant provisions of the convention. Reference to paragraph 2 (e) of article 151 in paragraph 9 of the resolution would limit the possibility of the submission by the Enterprise of plans of work in accordance with the convention on a one-to-one basis. He suggested that the words "as contained in paragraph 2 (e) of article 151" should be deleted from the first sentence of paragraph 9. Paragraph 13 was not well-phrased and should be reformulated to make its meaning clear. The resolution on preparatory investment should lapse when the convention entered into force. Paragraph 14 of the text would, therefore, need to be amended accordingly.

97. With regard to the question of participation, his delegation continued to believe that recognized national liberation movements should be allowed to participate fully in the convention. If international organizations were to be given the right to become parties to the convention on the basis of a majority of their members being parties to the convention, such participation must be limited to the competences transferred to such organizations, and States members of those organizations which were not parties to the convention must not be entitled to any rights or benefits which might accrue under the convention to States parties.

98. It would have been preferable to have the transitional clause as a part of the convention. However, he commended the President's efforts to find a solution to the complicated problem of participation and would be prepared to go along with any consensus which might emerge on the question.

99. With regard to the area of competence of the Second Committee, he regretted that it had not been possible to clarify article 21, relating to innocent passage of warships through territorial seas. He believed that the right of States to require prior authorization or notification for the passage of warships should be clearly reflected in the convention.

100. Turning to some issues of paramount interest to his delegation, he reiterated that the provisions relating to participation of other States in the exploitation of the living resources of the exclusive economic zone could not derogate

from the sovereign rights of coastal States over the resources in their exclusive economic zones.

101. With regard to the question of access to and from the sea and transit of land-locked States, his delegation believed that access to and from the sea and transit through a coastal State could not be considered a right, since such a concept would be in violation of the sovereignty of transit States.

102. The convention should allow for reservations by States parties in areas which were not of international concern. Such a provision would help to make the convention universally acceptable. It was also a norm of customary international law that reservations were permitted to States parties in the case of multilateral treaties.

103. With regard to the letter contained in document A/CONF.62/L.88, it would have been preferable if the drafting amendments suggested by the Chairman of the Third Committee had been placed before that Committee for its approval. Drafting changes suggested by the Chairman of the Third Committee should be examined by the Drafting Committee carefully so as to ensure that they did not touch on the substance of the issues already resolved.

104. Mr. LAUTENSCHLAGER (Federal Republic of Germany) recalled that his delegation had never considered Part XI of the draft convention satisfactory and had made that clear long before the United States announced its desire to review the results of the negotiations in 1981. He referred to his delegation's statement of 10 March 1981 contained in document A/CONF.62/WS/16.<sup>1</sup> It was therefore with regret that his and some other delegations had found that they had not been given in the first three weeks of the current session a fair chance to negotiate on the substance of the concerns that the Federal Republic of Germany and others, especially the President of the United States on 29 January 1982, had voiced. Those delegations had, however, been assured that consensus was still being sought on matters in Part XI.

105. The proposals of the group of "Friends of the Conference" which the Chairman of the First Committee introduced in his report (A/CONF.62/L.91, paras. 36 to 52) might prove to be a helpful basis for the work of the Conference in many respects, particularly with regard to technology transfer, approval of contracts and the Review Conference. Other points not covered by the paper should be pursued in the course of the Conference.

106. Regarding the draft resolution establishing the Preparatory Commission, contained in annex I of document A/CONF.62/C.1/L.30, his delegation welcomed any effort to bring the Preparatory Commission into existence as soon as possible. His country advocated that the signing of the final act should be made a pre-condition for entry into the Preparatory Commission, which should not start its work before the potential members of the first Council were represented. Since the Commission would have to deal with very important issues like the protection of preparatory investments, its composition and voting system needed further thought. His delegation advocated in particular a decision by the Conference on how the Preparatory Commission would decide on rules and regulations. All those questions were related to the overall question of decision-making in the Council, an issue which was still open to further negotiation. Regarding the issue in paragraph 5 (i) of the draft resolution, his country understood the concerns of African countries which were land-based producers, and believed that adjustment assistance instead of the production-limitation formula would be the appropriate solution to their problems.

107. The draft resolution governing preparatory investments contained in annex II of document A/CONF.62/C.1/L.30, though encouraging, left serious issues unclarified. His delegation's major concern was that the wide definition of a pioneer investor and the late cut-off date in paragraph 1 (a), taken in conjunction with the overlap solution in paragraph 5

(a), created uncertainties for those who at a very early stage had invested vast amounts in the development of sea-bed mining on specific sites. They would not receive an untested guarantee of obtaining a production authorization. His delegation further disagreed with the termination of preparatory investment rights after five years as stipulated in paragraph 14. Such a built-in moratorium and a denial of security of tenure were not acceptable solutions. As for paragraph 12 (d), his delegation believed it was the obligation of the States parties and not of the pioneer investors to ensure the availability of funds to the Enterprise. Again, any preparatory investment solution including a quid pro quo for the Enterprise must be seen in the perspective of a satisfactory Part XI of the draft convention.

108. His country's situation as a geographically disadvantaged State with considerable interests in shipping and fishing made it particularly concerned with Second and Third Committee matters. The future law of the sea convention would have to be interpreted and applied in favour of and consistent with the well-established and inherent principle of the freedom of the high seas. Of great importance too were the provisions concerning good faith, abuse of rights and settlement of disputes, since they represented key elements in ensuring an impartial application of the convention. His delegation continued to hold the positions it had taken earlier and which were reflected in the report of the Chairman of the Second Committee (A/CONF.62/L.87) and in document A/CONF.62/WS/16.

109. His delegation supported the United Kingdom proposal on article 60, paragraph 3, of the draft convention (C.2/Informal Meeting/66), since it was meant to ensure safety of navigation and of all other internationally lawful uses of the sea without giving discretionary power to coastal States. His delegation understood that the Inter-Governmental Maritime Consultative Organization would quickly develop appropriate standards with which coastal States would have to comply.

110. With regard to all other proposed amendments referred to in document A/CONF.62/L.87, his delegation preferred the current text of the provisions concerned. It objected particularly to any change in article 21. In the general balance of Second Committee matters, the recognition of traditional rights and freedoms of other States had been and still was the basis for accepting the extended rights and jurisdictions of coastal States provided for by the draft convention.

111. With regard to the proposals submitted by the Chairman of the Third Committee in document A/CONF.62/L.88, his delegation could not agree to their inclusion in the next version of the draft convention. In its view, that document needed further consideration in the Drafting Committee. In any case his delegation objected to the proposals on articles 196, 210, 216, 222 and 226 and on Part XI.

112. The President's report on the complex issues of participation in the convention, contained in document A/CONF.62/L.86, and his proposed solutions advanced the work of the Conference considerably towards the goal of achieving a universally acceptable convention. His delegation endorsed the position of the European Economic Community with respect to the participation of international organizations and stressed the political importance and the legal necessity of finding a satisfactory solution for the participation of the European Economic Community. His delegation had always felt that the convention should not be burdened by the issue of participation of those liberation movements which were observers at the Conference, but it would be prepared, in the interests of consensus and in a spirit of compromise and without recognizing it as a precedent, not to oppose the compromise solutions proposed by the President in his report.

113. Mr. LUIKO PAREDES (Ecuador) felt that the participation in the convention of international organizations would

be useful provided that such participation conformed to the requirements necessary for avoiding future difficulties and conflicts. His delegation agreed with the generally accepted criterion that one of the requirements for the participation of an international organization in the convention must be that the majority of its member States were parties to the convention.

114. At the same time, the participation of international organizations could not be a privilege reserved for a particular legal entity but the applicable provisions must have a general character which would make it possible to regulate suitably the present and future situations of the international organizations to be established. In that respect, the Permanent Commission of the South Pacific, to which Ecuador belonged, could make a valuable contribution.

115. His delegation agreed that, while the provisions concerning the participation of international organizations should be non-discriminatory, at the same time dual representation should be avoided. When signing the convention, the international organization should make a specific statement regarding the powers which had been transferred to it by the member States and member States, on signing the convention, should make similar statements regarding the powers transferred to the international organization.

116. His delegation welcomed the efforts that had been made during the present session to find an appropriate solution to the important question of the participation in the convention of national liberation movements.

117. The Preparatory Commission was called upon to ensure the prompt initiation of the machinery necessary for the operation of the Authority and its organs. It should not be necessary to establish unduly complicated regulations for the Preparatory Commission since its operations would cease as soon as its objectives had been completed and the convention entered into force. It was vital that the Preparatory Commission should have the broadest possible participation of States and should begin its work as soon as possible to ensure that the resources of the sea should remain the common heritage of mankind, as had been universally agreed. His delegation wished to reiterate its view that the resources of the sea outside of national jurisdiction could be developed only for the benefit of the whole of mankind. It therefore rejected any attempt to appropriate those resources unilaterally.

118. His delegation realized that a number of pioneer countries had made substantial investments in order to facilitate the rational development of marine resources. It believed that they should have reasonable guarantees to continue such activities but it must be made clear that they should be concerned only with exploration and that, under the convention, exploitation activities could only begin when the convention entered into force. For that purpose, the pioneer countries must accept and recognize the establishment of the parallel system and should assist in the rapid establishment of the Enterprise. His delegation believed that the draft resolution on the treatment of pioneer investments should provide a suitable means of regulating such activities in order to protect all the resources of the sea-bed, including polymetallic nodules, so that they would remain the common heritage of mankind.

119. The delegation of Ecuador had consistently maintained its view that the territorial sea should extend for 200 miles. Together with a large group of other countries from different geographical areas, it had insisted on the need to amend article 63 on fishing stocks in order to ensure an effective policy on conservation of the biological resources found both in the exclusive economic zone of the coastal States and in the maritime areas adjacent to the high seas. Without a global conception of the conservation of such resources in those areas, it would be impossible to defend them. Over the short term they would be seriously threatened as important sources of food and the very existence of the species might be threatened. It

was therefore for the coastal States to assume the primary responsibility for ensuring the conservation of such stocks and to adopt a rational policy for their utilization.

120. His delegation had consistently denounced the discriminatory treatment given in the convention to islands forming part of a continental State. The provisions of article 47 concerning archipelagic baselines should also apply to islands forming part of a continental State. Similarly, the text of article 21 concerning innocent passage should be amended so that coastal States had the power to regulate the passage of warships through their territorial waters. In order to avoid subsequent conflicts of interpretation, an increasing number of delegations had proposed a wide range of formulae to find a solution to the problem of innocent passage. However, their efforts so far had not met a similar spirit of comprehension from the delegations opposing that necessary clarification. If an authentic consensus was to be reached, then the text of article 21 would have to be adjusted.

121. There was no doubt that important progress had been made in the elaboration of the draft convention and his delegation hoped that the remaining obstacles would be overcome so as to ensure the adoption of a universal text. The President and Collegium had already made an important contribution to the attainment of that objective.

122. Mr. CHAYET (France) said, with regard to the report of the Chairman of the Drafting Committee (A/CONF.62/L.89), that his delegation was prepared to facilitate the work of that Committee as much as possible. Regarding the report of the Chairman of the Second Committee (A/CONF.62/L.87), not every proposed amendment to the text of the draft convention was such as to promote consensus. The changes proposed in article 21 (C.2/Informal Meeting/58/Rev.1) and article 60, paragraph 3 (C.2/Informal Meeting/66), were cases in point. Should the latter receive decisive support, however, his delegation would be inclined to add to such a paragraph some specifics regarding the maximum height of any parts of installations which were not scheduled to be removed, so as to limit the danger to navigation and the risk of damage to fishing equipment. France had distributed an informal text to that effect which it hoped would receive broad support. It should attenuate the harmful consequences of the amendment in question.

123. With regard to the report of the Chairman of the Third Committee (A/CONF.62/L.88), the amendments it contained fell into two categories: those dealing with substance—and they presented difficulties for his delegation—such as the amendments to article 196, which would then mean something other than in the French text, article 216, paragraph 2, and article 222; and those which instead were merely drafting changes and should be referred to the Drafting Committee if that had not already been done.

124. Concerning the report of the President on the question of participation in the convention (A/CONF.62/L.86), his delegation shared the common position reached by the 10 members of the European Economic Community on the participation of intergovernmental organizations. The compromise proposed by the President on participation by national liberation movements was acceptable, but his delegation would not be able to go beyond that. The draft resolution on the transitional provision contained in annex III of the President's report was also acceptable, but only in a spirit of compromise.

125. Despite the useful changes that had been made in the text of the draft resolution establishing the Preparatory Commission, his delegation still found it unacceptable because of some provisions which contradicted each other and the general spirit of the Conference. The Preparatory Commission, a transitional body between the Conference and the future International Sea-Bed Authority, was responsible for setting

up practical procedures for administering the common heritage of mankind. The new proposals contained in document A/CONF.62/C.1/L.30 gave even greater powers to the Preparatory Commission. It was therefore important that its membership, operation and financing should reflect the universal character of its mission. Hence, his delegation had always taken the position that the Preparatory Commission should be composed of the signatories of the final act and that its decisions should be taken, as in the Conference, by consensus. Under those circumstances, financing from the regular United Nations budget would be acceptable. The draft resolution before the Conference was unfortunately universal only with respect to the financial arrangements for which it provided, because only those States which had signed the convention or acceded to it would be able to take part in making decisions. That contradiction should be eliminated.

126. The régime for the protection of preparatory investments had a number of positive aspects, such as its indication of a reasonable size for exploration sites and its establishment of the principle that no more than one site might be assigned to a pioneer investor. Those two points guaranteed that the right of all States to have access to the resources which constituted the common heritage of mankind would be respected.

127. Despite those strong points, the text had serious shortcomings which prevented his delegation from accepting it. Here there were three essential considerations. First, the draft resolution governing preparatory investment contained in annex II should apply only to a limited number of investors if it was not to make the convention meaningless; but the criteria proposed in paragraph 1 (a) were not sufficiently selective, since the combination of the \$30 million amount set for investments and the date set at 1 January 1983 could favour speculative operations. Also the discretionary power left to the Preparatory Commission to establish other criteria for qualification and the failure to set a time-limit would cause a delay in the final identification of pioneer investors and make it virtually impossible for them to settle their disputes on just and equitable grounds. The procedure might also make it possible for some investors to seize control of the most favourable areas and operate them for several generations. Through the stratagem of flags of convenience, a pioneer consortium could in fact obtain several areas, one for each of its members. His delegation had constantly called for the inclusion of an anti-dominant position clause and could therefore not endorse such a provision. Use of the list of pioneer investors, issued in 1980 and recently brought up to date, seemed to his delegation the only way of guaranteeing that the transitional régime provided for in the draft resolution would be applied only to those for whom it was devised, and to all of them, and that they would not derive disproportionate advantages from it. That list would also have the advantage of facilitating the early entry into operation of the Enterprise.

128. Secondly, the draft resolution was faulty in its attempt to apply the production-limitation clause provided for in the draft convention to the interim régime. France continued to support the protection of the economies of developing land-based producing countries by means of controlled markets. Even from the technical point of view, that clause could conceivably create an unjust situation in which a pioneer investor could be refused the right to exploit an area after having gone to considerable expense and especially after having permitted the entry into operation of the Enterprise.

129. Thirdly, his delegation believed that the terminating clause contained in paragraph 14 of the draft resolution nullified it. The plans of work for exploration and exploitation of nodules that required 25 to 30 years before any profits could be realized could not be reconciled with that provision.

130. Three further points should be included in the draft resolution: the clearly expressed right by pioneer investors to settle disputes among themselves, the adoption of the system

provided for under the draft convention for rights relating to the consideration of applications, and the time periods to be observed and reimbursement procedures to be followed by the Enterprise with regard to services rendered to it by pioneers.

131. As for the attitude of France towards Part XI of the draft convention, events had put the Conference in a difficult and embarrassing position, since the real negotiations had not yet begun. They should be undertaken as soon as possible. Fortunately, the group of 11, now the group of 12, had suggested a series of compromise proposals. Their initiative was to be praised. Those proposals, which could eventually be expanded by their sponsors, offered a serious and positive basis for discussion. At the same time, they should not preclude an exchange of views on other questions. His delegation stood ready to engage in talks directed towards reaching a solution acceptable to all.

132. Mr. OGWAL (Uganda) said, regarding the draft resolution establishing the Preparatory Commission, contained in annex I of document A/CONF.62/C.1/L.30, that his delegation endorsed particularly the addition of paragraph 5 (i) which required the Preparatory Commission to prepare studies on the problems of developing land-based producers whose economies would be seriously affected by sea-bed mining. The Preparatory Commission should be empowered to establish a standing body or special commission to handle that problem and to see that the compensation fund mentioned was set up.

133. Regarding the venue of the Preparatory Commission, given the availability of facilities in Jamaica, his delegation supported the President's proposal that the Preparatory Commission should meet at the seat of the International Sea-Bed Authority, if that was feasible for the host country.

134. With regard to the composition of the organs of the Council as provided for in article 163 of the draft convention, his delegation agreed with the Chairman of the Group of 77 that article 163, paragraph 4, should be redrafted to provide that at least two members of the Economic Planning Commission should be elected from the developing countries which were producers of some of the minerals to be extracted from the area. Such a proposal (WG.21/Informal Paper 23) balanced the interests of all concerned.

135. The draft resolution governing preparatory investment in pioneer activities, contained in annex II of document A/CONF.62/C.1/L.30, also provided a welcome framework within which to establish an appropriate operating system for the Preparatory Commission. Both the Preparatory Commission and preparatory investments must be seen in the context of the draft convention in its entirety. Certain elements in the draft resolution on preparatory investments needed to be harmonized with the relevant provisions of the draft convention: for example, the draft resolution concerned itself with polymetallic nodules as opposed to the minerals referred to in article 133 of the draft convention, and paragraph 13 should be brought into line with the draft convention. Paragraphs 8 and 9 of the draft resolution could be improved and paragraph 14 should be redrafted as proposed by the Group of 77 (A/CONF.62/L.116).

136. Concerning the funds of the Authority dealt with in article 171 of the draft convention, a new subparagraph (f) should be added to provide that payment be made to the compensation fund to be set up pursuant to article 151, paragraph 4, on the basis of advice from the Economic Planning Commission. There were countries whose economies might suffer as a result of full-scale sea-bed mining and the international community could not ignore the plight of such unfortunate countries.

137. The report of the President on the question of participation in the convention (A/CONF.62/L.86) provided an acceptable basis for resolving the problem of participation by associated States and international organizations. His delegation endorsed the proposal that an international organization should be allowed to sign the convention if a majority of its States members were signatories and had transferred to their organization competence over matters governed by the convention, including the competence to enter into treaties in respect of such matters. A State which was not a party to the convention but was a member of an international organization that was a party to the convention should not indirectly acquire any rights provided under the convention. His delegation was supporting the President's proposal in a spirit of compromise; it would have preferred international organizations to be made parties to the convention only if all their member States were parties, since it believed that it was not easy for an international organization to keep from conferring benefits, directly or indirectly, on any members which were not parties.

138. The solution proposed by the President to the question of participation in the convention by national liberation movements should be given serious consideration. All delegations consistently affirmed, as did article 140 of the draft convention, that activities in the Area should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States and taking into particular consideration the interests and needs of developing States and of peoples who had not attained full independence. The United Nations and a number of regional organizations had recognized some national liberation movements as being the legitimate representatives of their people and they should therefore be allowed to become full parties to the convention if they wished. To accord them only observer status would make it impossible for those movements to protect the interests and wishes of their people effectively. The President's proposal on the matter, therefore, should be modified accordingly. His delegation agreed with the President's compromise proposal that only those national liberation movements which had been participating in the Conference and which had been recognized by the United Nations and by a regional organization should be entitled to become full parties to the convention. Unless national liberation movements had *locus standi* before the International Tribunal on the Law of the Sea, they would not be able to defend the interests of their people.

139. It was to be hoped that all the pending issues before the Conference would be resolved by consensus so as not to disturb the delicate balances and packages that formed the text of the draft convention. It would not be advisable at that late stage of the Conference to reopen any fundamental issues; therefore a proposal such as that made by the Federal Republic of Germany concerning article 125, paragraph 2, of the draft convention could not be accepted by his delegation, as representing a land-locked State. It preferred the current wording "terms" to the suggested "conditions". It did, however, support the proposal of Romania and Yugoslavia concerning article 62, paragraph 3, of the draft convention, as contained in document C.2/Informal Meeting/70.

140. His delegation regretted that the proposal to establish the Common Heritage Fund had not thus far received the broad support it deserved. A fund to be established in accordance with the norm that the resources of the oceans were the common heritage of mankind would go a long way towards narrowing the gap between rich and poor in conformity with the North-South dialogue, and it could also be used to assist international organizations in their quest to preserve the marine environment. Uganda urged that the proposal be given serious attention.

141. His delegation was committed to the adoption of the

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

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

*The meeting rose at 1.10 p.m.*

## 162nd meeting

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

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

Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 15 November 1973 (*continued*)

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

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

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

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

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

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

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

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

<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).