Third United Nations Conference on the Law of the Sea

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163rd Plenary meeting

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tion criteria, however important, was also a very meagre result from many years of intensive negotiations. No acceptable formula had yet been found to satisfy the just and reasonable requirements of smaller industrialized States and to enable them to be represented in the Council of the Authority. The rules on innocent passage and straits used for international navigation did not in all respects take into account the interests of the coastal States concerned.

108. Despite those shortcomings, however, the draft convention had to be regarded as a package reflecting the results of arduous negotiations and as one of the most important achievements in the development of international law. It was in many respects a compromise reached by making concessions and accepting solutions which represented a delicate balance between divergent opinions and interests, and it did not represent the views of any particular group of States. It was intended to become a basis for the future economic and social development of the international community and every effort should be made to adopt it by consensus. In order to bridge the gap between divergent positions, with particular reference to part XI, 11 like-minded delegations, including his own, had prepared some compromise proposals (WG.21/Informal Paper 21) which could serve as a basis for further negotiations. He appealed to all delegations to consider them and to renew their efforts to rectify the serious situation prevailing in the Conference.

109. His delegation took note of the draft resolutions on the Preparatory Commission and on preparatory investment in annexes I and II of document A/CONF.62/C.1/L.30 and hoped that negotiations carried out on the basis of those proposals would prove successful.

110. The Chairman of the Second Committee had concluded his report (A/CONF.62/L.87) by stating that "there is a real consensus on the need to preserve the fundamental elements of the parts of the draft convention which are within the competence of the Second Committee". His delegation underlined the importance of that statement, and pointed out in that connection that the draft articles on innocent passage did not affect the well-established international practice, applied also by Finland, that coastal States had the right of innocent passage, and that the legal régimes concerning passage in the Danish straits and the strait between Aland Islands and Sweden were regulated by long-standing international conventions of the kind referred to in article 35 (*c*); it was important that that provision should remain unchanged.

The meeting rose at 6.10 p.m.

163rd meeting

Wednesday, 31 March 1982, at 8.10 p.m.

President: Mr. M. O. ADIO (Nigeria)

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

1. Mr. LARSSON (Sweden) said that, although the Conference had reached a critical stage, the considerable difficulties confronting it might yet be resolved through a final effort to reach consensus which might be attained on the basis of the proposals put forward by the group of 11. There was no doubt that the value of the convention would be seriously diminished if the principle of consensus were abandoned and if a number of States whose accession to the convention was of great importance refused to ratify it. The result would be a considerable degree of legal uncertainty and an obvious risk of anarchy in the field of deep-sea mining. It was the responsibility of all members of the world community to avoid such a situation, and he therefore appealed to all States participating in the Conference to reconcile their differing interests in order to guarantee a successful outcome.

2. Turning to issues of special interest to his Government, he said that, while the existing wording of article 161, paragraph 1, regarding the composition of the Council virtually excluded a large group of small and medium-sized industrialized countries from representation on the Council for excessive periods of time, those countries were none the less required to make considerable contributions to the financing of the Enterprise. His delegation was open to any solution which might give those countries the opportunity of reasonable access to representation on the Council. That could be done through a modest increase in the Council's membership, and he urged the participants to approach the problem with an open mind.

3. A solution was also urgently required to the problem of preparatory investment protection, and the solution proposed by the President of the Conference was a reasonable and balanced compromise which ought to offer prospects of consensus.

4. On the question of delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts, an issue of particular interest to his delegation, the Conference was also indebted to the President for his efforts at the last session, which had led to a formula which seemed likely to gain general acceptance.

5. His delegation supported the United Kingdom proposal to amend article 60, paragraph 3 (C.2/Informal Meeting/66), by providing for a less strict application of the obligation to remove abandoned installations and structures in the exclusive economic zone.

6. It could accept the existing text of those parts of the convention which dealt with innocent passage through territorial seas. Sweden had long required prior notification by foreign warships and other Government-owned vessels used for non-commercial purpose in regard to their passage through the Swedish territorial sea. That requirement did not, however, in any way affect their right to innocent passage through the Swedish territorial sea, and it was therefore his understanding that the provision was compatible with the rules and principles of current international law and that the legal situation would not be changed by the entry into force of the convention.

7. His delegation was also able to accept the proposed rules regarding passage through straits, and noted in that connection the exception from the transit passage régime referred to in article 35 (*c*) of the draft convention. That exception, which applied to straits in which passage was already regulated in whole or in part by long-standing international conventions, was of great importance to his country in that it would be applicable to the straits between Sweden and Denmark and also between Sweden and the Aland Islands.

8. The position of his Government on the question of marine scientific research was that such research in the exclusive economic zone and on the continental shelf beyond 200 nautical miles should enjoy a considerable degree of freedom and should be subject to few restrictions. He regretted, however, that the relevant provisions of the draft convention did not fully reflect his Government's basic position.

9. Sweden attached great importance to the question of the relation between the new convention and the conventions on the laws of war and of neutrality, which had been laid down in considerable detail in such long-standing and widely-accepted international agreements as the Hague Conventions of 1907.[1] It was his understanding that article 311, paragraph 2, provided for the continued application of those conventions in time of war and that the rights and obligations resulting therefrom would not be affected by the new law of the sea.

10. Mr. TELLO (Mexico) said that his delegation, desiring to find appropriate solutions to the outstanding issues and to consider all specific proposals aimed at clarifying or improving the draft convention and to complete the agenda, had not only examined the items included in the agenda as pending questions, but had also paid the greatest attention to changes of views on the part of other delegations, particularly the set of amendments submitted to the Conference by the United States (WG.21/Informal Paper 18). The conclusion which had emerged from careful scrutiny was that the vast majority of those amendments, if incorporated, would detract from the essence and structure of the draft convention into which so much effort had gone over the past 10 years.

11. His delegation had viewed with interest the proposals put forward in the working group of 21 seeking to reconcile the position of the United States and that of the countries of the Group of 77 and other States on Part XI of the draft convention. Nevertheless, bearing in mind that the draft convention, as it stood, was the outcome of generally agreed concessions, it could not be ascribed to any particular group of countries but must be regarded as the reflection of a consensus reached among all participants, including the United States. Although the formulas proposed in the reports recently submitted by the President and by the Chairmen of the First and Second Committees on the consultations and negotiations conducted on the outstanding issues did not necessarily coincide with those favoured by his delegation, they were in keeping with the widespread wish for the draft convention to be acceptable to the overwhelming majority of participants. The goal of harmonizing divergences as far as possible without detracting from the essence of the draft convention had been attained to a large extent, particularly with respect to the recommendation formulated by the Chairman of the Second Committee in his report (A/CONF.62/L.87) in relation to article 60, paragraph 3, of the draft convention.

12. As to the compromise solutions put forward in document A/CONF.62/C.1/L.30 for resolving the outstanding issues of the Preparatory Commission and preparatory investments, the proposals on the former offered good prospects for reaching a consensus, while the draft resolution on the latter in annex II of that document contained certain positive elements which might serve as a basis for negotiating a number of points connected with the concern of the Group of 77 to ensure that all activities in the area designated as the common heritage of mankind were carried out in accordance with the convention.

13. To turn to the pending issue of the participation of national liberation movements and international organizations, the formula proposed by the President (A/CONF.62/L.86, annex III) as a compromise solution was acceptable in that it was likely to lead to the adoption of the convention by the greatest possible number of States.

14. Mr. WOLF (Austria) said that it was generally recognized that, in an undertaking of such magnitude as the proposed convention, every country had to make concessions and every country would have grievances. It was a matter for regret that it had been the land-locked and geographically disadvantaged States which had had to make the greatest concessions and which had the most serious grievances. A country such as his own had indeed little to gain from the convention except the conviction that it had contributed something to the maintenance of peace and to the emergence of a new international order based on co-operation, mutual aid and the principle of the common heritage of mankind.

15. Referring to those points on which Austria felt particularly disadvantaged as a member of the group of the land-locked and geographically disadvantaged States, he said that his delegation still had serious doubts as to whether the delimitation of the continental shelf was adequate and took into account the added disability to which those States would be subject by virtue of the proposed limitation. It was yet to be seen whether the proposals aimed at providing compensation for that position would be acceptable to the Conference.

16. The new legal régime for the exclusive economic zone would constitute a major concession to the needs and legitimate interests of the coastal States on the part of those States which could not themselves benefit from that régime. The rights established under the régime should not, therefore, be expanded to the detriment of the vital needs and interests of the community as a whole. Consequently, particular emphasis should be laid on the rights of the land-locked and geographically disadvantaged States in regard to the exploitation of living resources in the exclusive economic zone. No distinction should be drawn between developing and other States in that respect as both categories were equally disadvantaged.

17. His delegation would have wished to see the small and medium-sized industrialized countries more adequately represented on the council in view of the financial contribution which would be expected from them.

18. However modest the rights of land-locked and geographically disadvantaged States regarding marine scientific research in the exclusive economic zone of other States under article 254 might be, they would have to be applied in such a way as to ensure that the countries concerned stood to derive some benefit from the article.

19. Finally, in connection with disputes relating to the exclusive economic zone, his delegation would have preferred to see a system for settlement which made provision for binding awards.

20. The discussions on the two immediate issues before the Conference, namely, the protection of preparatory investments, the Preparatory Commission and participation in the convention, had been constructive, in particular, the proposals put forward by the French delegation (TPIC/4) aimed at ensuring that not only "pioneer operators" but also the Authority and the Enterprise should benefit from the required interim guarantees.

21. On previous occasions his delegation had supported the concept of joint ventures between the Authority and operators as the most cost-effective solution to the problems of transferring technology and financing the Enterprise.

22. It was generally acknowledged that, for reasons extrinsic to the Conference, the commercial exploitation of deep-seabed minerals was for the distant future, and the Authority might have to wait a long time if it were to depend on "contracts" or joint ventures, since activities in the Area would for the foreseeable future consist of exploration, research and development, and not of exploitation. It the Authority was to be of immediate use to the international community it should,

[1] Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907*, New York, Oxford University Press, 1918.

at the earliest possible opportunity, establish a joint venture on exploration, research and development, and he commended the proposal of the French delegation as fully compatible with that form of practical implementation. At the same time, he pointed out that a joint venture would be less costly to the industrial nations and require considerably less investment capital. It would also be much more beneficial to developing countries in that it would provide an infrastructure for a future joint venture in exploitation, thus enabling the Authority and the Enterprise to engage directly in sea-bed mining, in co-operation rather than in competition with the other "operators".

23. Such a joint venture would bring the Authority and developing countries into the mainstream of oceanographic research. There was no need to stress the enormous importance to the developing countries of acquiring a scientific infrastructure, which was, as generally recognized, the basis for technological development in the building of a new international economic order.

24. Mr. BENÍTEZ-SAENZ (Uruguay) observed that, as the many years of arduous negotiations to formulate a new legal order for the sea were drawing to a close, any failure to reach general agreement or any attempt to disregard the compromise solutions so painstakingly achieved would jeopardize the principle of good faith, shake the very foundations of the United Nations and result in a widespread feeling of frustration, with grave implications for international peace and security. It was of paramount importance for the convention to command universal acceptance uncontrovertibly founded on consensus. While it would be regrettable if one State or a small group of States failed to accept the convention, the absence of a convention would have the gravest consequences and compromise the responsibility of the international community as a whole. His delegation was therefore prepared, if necessary, to have the draft convention put to the vote for posterity to judge.

25. Even though his delegation had reservations concerning the draft convention, it was aware of the need for compromise and therefore considered that the proposals on the questions of participation, the Preparatory Commission and preparatory investments provided a satisfactory solution to the outstanding issues and believed that informal consultations might be pursued on the basis of the President's proposals.

26. Some difficulties of interpretation might arise, however, as a result of the focusing of attention in the later stages of the Conference on a number of pivotal issues, particularly as far as certain related provisions were concerned. For example, it was clear that the fundamental structure of the exclusive economic zone was set forth in articles 56 and 58 defining the rights and duties of coastal States and of other States and the specific legal régime applicable to that zone. Those fundamental provisions had been adjusted on several occasions before the current formula had been established whereby the coastal State exercised sovereign rights for all economic purposes and specific jurisdiction, subject to the terms of the convention, over specified activities, and whereby other States enjoyed, subject to the relevant provisions of the convention, the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms. The interpretation given to other provisions in Part V must be kept in absolute harmony with those two articles, in which the political agreement achieved had been faithfully reflected. For example, any interpretation to the effect that article 56 did not cover all economic purposes connected with the sovereign right of the coastal State, or that article 58 did not cover all the internationally lawful uses of the sea connected with the freedoms recognized in that same article and compatible with the convention, would run counter to the very concept of exclusive economic zone.

27. For amendments to be compatible, the wording of article 60, paragraph 1, should be modified in accordance with the informal proposal made jointly by the delegations of Uruguay and Brazil. For the sake of compatibility, article 73 should also be amended to remove the qualification of resources in paragraph 1 as merely living resources, since it was obvious that the sovereign rights of the coastal State were to be exercised over all resources.

28. Furthermore, given the legally protected special interests of the coastal State in the exclusive economic zone, the coastal State must be informed in normal circumstances of the carrying out of the acts of boarding, search, inspection or seizure by third States in the cases referred to in articles 105, 108, 109, 110 and the relevant provisions of article 111, in order to facilitate international co-operation in the matter.

29. Yet another amendment which would serve to clarify the interpretation of the draft convention was that in document C.2/Informal Meeting/58/Rev.1 aimed at supplementing article 21 so as to avoid any misunderstanding as to the right of a coastal State to enact legislation governing the innocent passage of warships for its own security.

30. Finally, his delegation wished to reiterate the views it had expressed in the Second Committee on the importance of adopting the informal proposal it had cosponsored in document C.2/Informal Meeting/54/Rev.1 on article 63 to enlarge the scope of the rights of a coastal State over the resources of its exclusive economic zone. Work might also be continued on the informal suggestions put forward by the delegation of Peru in documents C.2/Informal Meeting/63, 67 and 68 with a view to reaching an agreement, since they would make a valuable contribution to the clarity and coherence of the draft convention.

31. Mr. BRÜCKNER (Denmark) said that the draft resolutions in annexes I and II of document A/CONF.62/C.1/L.30 constituted a sound basis for compromise solutions on the questions of establishing a Preparatory Commission and the treatment of preparatory investments. Certain questions still had to be clarified, in particular, the correct understanding of the effects of paragraphs 13 and 14 of the draft resolution on preparatory investments, contained in annex II.

32. Progress had also been achieved on the question of participation, and his delegation welcomed the proposals in annexes I to III of the report of the President (A/CONF.62/L.86).

33. His delegation fully supported the statement made at the 160th meeting by the representative of Belgium on behalf of the European Economic Community and its 10 member States in respect of the proposals for the participation of international organizations. With regard to annex II of the report, any further demands would be liable to create additional difficulties in the search for consensus on that issue.

34. Turning to the points of specific interest to his Government raised by the report of the Chairman of the Second Committee (A/CONF.62/L.87), he pointed out that article 76 of the draft convention, on the definition of the continental shelf, was, in its existing form, generally acceptable to his delegation. That position was based on the understanding that the three geomorphological features mentioned in paragraph 3 as the elements of the continental margin, namely, the shelf, the slope and the rise, were to be considered as surface features of an underlying fundamental geological feature, and that there must accordingly be a fundamental unity of the geological structure throughout the whole submarine area which a coastal State could claim as its continental shelf, based on the concept of natural prolongation. Thus, the convention did not permit a coastal State to claim for itself submarine areas which were not a fundamental geological continuation of its land mass. If that were not the case, existing customary international law would be changed to the disad-

vantage of the international community. His delegation had put forward that interpretation of article 76 on earlier occasions without hearing opinions to the contrary.

35. The compromise proposed by the President at the154th meeting, on 28 August 1981 (A/CONF.62/WP.11), on the delimitation criteria set forth in article 74, paragraph 1, and article 83, paragraph 1, was acceptable to his delegation. According to article 311, paragraph 1, the new convention would prevail over the 1958 Geneva Convention on the Law of the Sea. In identifying the maritime area to be delimited between countries which were parties to both conventions, the provisions in the new convention on natural prolongation and on rocks which could not sustain human habitation or economic life of their own must, in his understanding, prevail over the obsolete exploitability criteria and the provision on islands in the Geneva Convention of 1958 on the Continental Shelf.[2] His delegation's acceptance of the proposed delimitation criterion, with its reference to Article 38 of the Statute of the International Court of Justice, was based on that understanding of the relationship with article 311, paragraph 1, in the draft convention.

36. In article 79 the right of laying submarine cables and pipelines on the continental shelf of another State was maintained in principle. His delegation had emphasized on previous occasions that there was a great difference between the laying of a cable and the laying of a pipeline. The laying of pipelines should, therefore, take place only with the consent of the coastal State.

37. The existing text of Part III, concerning straits used for international navigation, represented a balanced solution to the problem. He joined with the representative of Sweden in welcoming the text in article 35 (*c*), which maintained the existing régime in straits in which passage was regulated in whole or in part by long-standing international conventions. After negotiations with all interested parties his delegation was satisfied that article 35 (*c*) applied to the specific régime in the Danish straits, a régime which had developed over the years on the basis of the Copenhagen Convention of 1857.

38. In connection with the conservation, management and study of cetaceans, his delegation noted that the second sentence of article 65 obliged States to "work through" an appropriate international organization. That provision should be understood to mean that the assistance of an international organization in the conservation, management and study of any particular stock of cetaceans would be required when such measures were considered desirable and necessary in respect of those individual stocks.

39. His delegation also endorsed the proposal to amend article 60, paragraph 3, as noted in the report of the Chairman of the Second Committee (A/CONF.62/L.87).

40. His delegation agreed that the list of drafting changes relating to Parts XII and XIII mentioned in the letter from the Chairman of the Third Committee (A/CONF.62/L.88) should be more closely examined.

41. Article 234 was of particular interest to his Government, and he greatly appreciated the progress reflected in the current text regarding the possibilities of protecting the highly vulnerable Arctic Sea from pollution by oil and other harmful substances. It was commonly known that the risk of marine accidents was aggravated in areas of the sea which were covered by large, drifting masses of ice. Moreover, the degradability of oil and other pollutants was extremely slow in Arctic areas because of low sea temperatures. Another important factor was the new plans for year round navigation in areas which were ice-covered the greater part of the year and in which navigation was only possible with the aid of huge ice-breaking vessels which had to use considerable amounts of energy to break the ice. There was a serious danger that the noise resulting from ice-breaking itself, and especially from the propellers of vessels, would disturb the ecological balance in areas where hitherto the impact of modern civilization had been on a modest scale.

42. The increasing exploitation of non-renewable resources in Arctic areas meant that it was of paramount importance to his country that a foundation be laid for up-to-date regulation of navigational activities in the waters surrounding Greenland, particularly in view of the fact that the Greenlanders were highly dependent for subsistence on the living resources of the surrounding seas, and particularly the marine mammals, which provided a livelihood for the local hunters in the northern and eastern parts of that country. Consequently, with year-round navigation and huge vessels such as ice-breaking tankers along the coasts of Greenland, it could be anticipated that major harm to or irreversible disturbance of the ecological balance would be caused.

43. He hoped that the adoption of article 234 would strengthen the basis for intervening, in a non-discriminating manner, against the threats to the Arctic environment which he had just described.

44. In general, his delegation found itself deeply concerned by the general situation in which the Conference found itself at the current session. Despite considerable efforts by the President and participating delegations, it had not yet been possible to solve the issues recently raised by the United States (WG.21/Informal Paper 18) and supported to a varying degree by major Western European countries and Japan. If a generally acceptable solution was to be found, intensive negotiations would have to be initiated as soon as possible between the group of 5 and the Group of 77, as had been mentioned earlier by the representative of Australia. We had registered with satisfaction that four of the members of the group of 5, during the debate, had welcomed the text contained in Informal Paper 21 of March 25, as a good basis for further negotiations. It was his sincere hope that all delegations concerned would share that view. To attain that objective, an agreed framework for negotiations must be found. In particular, a realistic approach to negotiations on improvements to Part XI within the parameters outlined earlier by the President was necessary in order to achieve a global Convention which could be adopted by consensus. His delegation was confident that no delegation would have reasonable grounds for arguing that its major legitimate concerns had not been heard.

45. The failure to achieve such a consensus would have very serious consequences. It would lead to uncertainties as to the legal status of the sea and would create a risk that individual countries might implement the Convention selectively, thus increasing the possibility of new international confrontations and conflicts. His delegation was also seriously concerned about the negative effect that failure to reach consensus would have on North/South relations and on the future role of the United Nations in international negotiations.

46. Mr. ROSENNE (Israel) said that in the general debates at Caracas on the law of the sea as a whole, especially in the plenary Conference and in the Second Committee, at the fourth session, on the settlement of disputes,[3] and, at the eighth session, on the final clauses,[4] his delegation had indicated its general position on the main problems then under discussion and had given notice of its major preoccupations. Those preoccupations related principally to ensuring maximum freedom of navigation and overflight and other forms of communication over and under the sea, notwithstanding

[2] United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.

[3] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), 62nd meeting.

[4] *Ibid.*, 95th and 97th meetings.

the redistribution of jurisdiction and competences over parts of the sea and sea-bed and their resources, and to the issue of participation in the convention, in the instrumentalities it set up, in related documents and in the Authority and its organs, its work and its resources, His delegation, however, still had difficulties with the text but, since its position had been expressed as the texts had emerged from the negotiating process, he would concentrate on what it perceived as the major elements of the draft convention, reserving its right to supplement those remarks later if necessary.

47. The preamble could be regarded with satisfaction and was an important guide to interpreting the convention in good faith. His delegation, like many others, attached particular importance to the characterization of the legal order for the oceans which the preamble set forth.

48. With regard to Part II on the territorial sea and contiguous zone, his delegation remained concerned at the proposed extension of the breadth of the territorial sea and contiguous zone in the context of the restructuring of the law of the sea, particularly in respect of narrow waters. Nevertheless, and for reasons indicated during the Conference, it was re-examining the whole question of the areas of sea and sea-bed to come within Israel's national jurisdiction or under its sovereign rights, and the competences it needed to exercise in and over them, bearing in mind also the general practice of the States in the vicinity of Israel or whose coasts were washed by the same seas, and his country's security interests. His delegation would make its position known in due course and in the light of developments, including the outcome of the Conference.

49. His delegation interpreted article 3, on the breadth of the territorial sea, as laying down that the coastal State's right to establish the breadth of its territorial sea up to 12 nautical miles could only be exercised in such a way as would not deprive another State of its complete freedom of access (including overflight) to the high seas. In fact that principle was already incorporated in article 7, paragraph 6, and he understood it as applying generally to all bays and gulfs and other special geographical formations. That was an existing general rule which became more significant with the proposed extension of the permissible maximum breadth of the territorial sea.

50. In Part III, on straits used for international navigation, the fact that the law was no longer treated as an appendage to the law on the territorial sea or as an exception to the right of innocent passage was a positive feature which his delegation had been advocating since 1956.[5] At the same time, Part III contained regressive elements in that distortions had been introduced in the interests of political opportunism. Until the Caracas session in 1974, the basic and accepted principle was that a single legal régime applied to passage through all such straits unless the passage régime was governed by an international treaty. In his delegation's view, that fundamental rule of law still governed that important matter. Since Caracas, serious distortions leading to previously unknown differentiations between straits had appeared in the informal composite negotiating text and in the draft convention. Those distortions were the source of great difficulty, except to the extent that particular stipulations and understandings for a passage régime for specific straits, with wider rights for their users, were protected, as was the case for some of the straits in his country's region.

51. In thus differentiating between categories of straits used for international navigation (save where required by agreements) he did not see any element of progressive development or codification, or any obvious advantage. Article 45 could easily be dropped and article 38 simplified to make it clear that the section applied to all straits used for international navigation, subject only to article 35 and, if the states concerned insisted, to article 38, paragraph 1. In any case, his delegation did not know to what article 45, paragraph 1 (*b*), was intended to apply; Israel was party to no negotiation or agreement concerning it and did not regard it as applicable in its part of the world. On the other hand, where the passage was governed by a treaty, the régime thus established was to be respected.

52. Part V, on the exclusive economic zone, was still open to improvement regarding the emphasis to be given to the freedom of navigation and in such articles as 60, 62, 63 and 70, in the latter case in order to accentuate the rights of States such as Israel with special geographical characteristics to share in the resources of nearby zones.

53. His delegation had paid special attention to articles 74 and 83, together with article 298, paragraph 1 (*a*) (i) on the delimitation of maritime zones. He fully agreed that compulsory recourse to conciliation should be substituted for the earlier sweeping recourse to judicial settlement or arbitration. At the 154th plenary meeting, his delegation had formulated reserves regarding the new language for paragraph 1 of those articles. He also considered that paragraph 2 in the two articles served no useful purpose and could not accept the notion that the absence of agreement could itself constitute a dispute within the meaning of Part XV. The draft convention would be improved by the deletion of those two paragraphs, and he would ask the Collegium to reconsider that issue.

54. His only comment on Part VII (the high seas) which, through article 58, was largely applicable to the exclusive economic zone for ensuring freedom of navigation and overflight, related to article 109, which he considered as redundant and as opening the way to unjustified interference with the freedom of navigation and certain basic human rights that should be exercisable on the high seas. Adequate police powers for dealing with unauthorized broadcasting from the high seas could be introduced without enlisting a dreadnought to crack a sea-snail, as did the draft convention. As his delegation had suggested in document C.2/Informal Meeting/38, article 109 and article 110, paragraph 1 (*c*), could be adjusted. In that connection, he considered that the International Telecommunication Union, with its expertise, would be more competent to deal with the matter than the Conference.

55. He shared the doubts of some others regarding the need for Part IX on enclosed or semi-enclosed seas, so long as freedom of access by sea and air into, through and over those seas was to be dealt with by the implication that Part III—after certain obscurities had been removed—was applicable. The text could therefore be improved by adding a new article 122 *bis* to the effect that transit passage, as defined in Part III, applied to the passage of all ships and aircraft through or over those seas, including their outlets. Without such provision, he wondered what useful service was performed by Part IX in its existing form. Alternatively, Part IX could easily be dropped and the relevant provisions of Part III left to operate freely.

56. Referring to Informal Paper 25 of the Drafting Committee, he pointed out that Part XI, on the international Area, was the major innovation of the Conference. Its tentative character was emphasized by articles 154 and 155. His delegation had placed on record its strong reservations concerning the changes made in articles 140, 160, paragraph 2 (*f*) (i), and 162, paragraph 2 (*o*) (i), regarding the interpretation of the expression "common heritage of mankind" as applied to the resources of the international area and their distribution to certain non-State entities. Those changes had introduced a superfluous and divisive element. Similarly, he could not accept the amendments to articles 156 and 319 proposed by the President in annex II of document A/CONF.62/L.86, the suggestions in paragraph 16 of the same document, or paragraph 2 of the resolution on the Preparatory Commission in annex I of document A/CONF.62/C.1/L.30. His delegation

[5] See *Yearbook of the International Law Commission 1956*, vol. II, document A/CN.4/99/Add.1.

also reiterated its support for the proposal in document WG.21/Informal Paper 19 for proper representation of smaller industrialized countries in the Council, bearing in mind that there was nothing static about the criteria mentioned in article 161, paragraph 1. He shared the view that adequate safeguards for labour, especially labour employed by the Enterprise, should be introduced as soon as possible, as requested by the International Labour Organisation (A/CONF.62/83).[6] Other delegations had stressed the point, which was one to which the Preparatory Commission should direct its attention without delay.

57. With regard to Part XII, on the protection and preservation of the marine environment, some of the changes introduced since the *Amoco Cadiz* disaster were disturbing and could open the way to undue interference with navigation. He referred to his delegation's statement at the 43rd meeting of the Third Committee at the resumed eighth session.[6] In his view, Part V governed all matters relating to the exclusive economic zone and Part VII all matters relating to the high seas, while Part XII must be read in the light of those two dominant parts. He detected certain improvements in the letter of the Chairman of the Third Committee (A/CONF.62/L.88). His delegation accepted the proposition that coastal States might take reasonable precautions against known risks of excessive pollution, even when caused by accidents, especially in heavily travelled waters. The general requirement in articles 59 and 300, however, that the convention should be applied equitably and in good faith might not provide adequate safeguards against arbitrary, inequitable and unjustified actions by coastal States alleging that such interferences with navigation were needed for their protection against pollution. In fact the discretionary powers of coastal States were governed by a series of treaties in force, and those treaties laid down clear and unequivocal criteria following from internationally accepted norms and standards which should constitute the basis for national legislation regulating coastal and flag State jurisdiction. Similarly, all coastal State activity must be based upon clear factual evidence of actual discharge of pollutants in order to avoid unnecessary and arbitrary interference with navigation through ambiguous and abusive interpretations of vague principles.

58. The new rules for the protection and preservation of the marine environment, as a general framework to be completed, or as completed, by the competent universal or regional intergovernmental organizations, could be a useful step forward. All such environmental and ecological issues required mutual trust and co-operation among all the States concerned, co-operation which his government was willing to extend. In the Mediterranean region a start had been made with the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976, which was open to all Mediterranean States. Their joint, active and effective participation in the co-operative effort to clean the Mediterranean and keep it clean was essential. A similar evolution was urgently needed for the whole of the Red Sea, as defined in generally accepted international treaties. The Barcelona Convention required substantial strengthening in its substantive provisions and in accessions thereto, and he hoped that all concerned Governments and competent international organizations would do everything in their power to encourage participation in that Convention. Such massive ecological problems involving the whole of mankind could only be satisfactorily resolved on a planetary scale, and any discriminatory or exclusionary approach was completely inadmissible.

59. Part XV, on the settlement of disputes, was unduly complex. The inclusion of provisions which were merely hortatory or simply reiterated Charter obligations was unnecessary. Section 1 of that Part was particularly confusing, and most of it could probably be omitted. The reorganization of the remainder, mostly on the initiative of the Argentine delegation, was an improvement. Article 297, paragraph 2, dealt with the settlement of disputes concerning marine scientific research, rendering article 264 redundant, and he asked the Collegium to examine that question.

60. His delegation attached considerable importance to some of the final clauses in Part XVII, including the question of participation, and his delegation's final attitude towards the convention as a whole and its adoption would depend upon sound, and not merely opportunistic, solutions being found. The so-called "transitional provision" was unacceptable in any form, and had no place whatsoever in a treaty concluded between States on the law of the sea, or in any document emanating from the Conference.

61. Referring to article 320, he said that all the negotiating texts from the single negotiating text onwards had been presented originally in English, and English was the language in which most of the negotiations in the Conference had been conducted. Bearing in mind the status of the Arabic language in Israel alongside Hebrew, he was not satisfied that the Arabic text always accurately conveyed the concepts and sense of the English text, and he had noted the statement of the co-ordinator of the Arab language group in annex 3 of document A/CONF.62/L.67/Rev.1.[7] At the same time, his delegation appreciated the great efforts made by that language group to improve its text and its concordance with the other languages.

62. In the light of the foregoing remarks and other previously expressed reservations and objections, his delegation would examine the text emanating from the current session and the way in which it was to be adopted before finally determining its attitude towards it.

63. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) expressed satisfaction that a substantial step forward had been achieved on the unresolved problems left over from the previous session of the Conference. There was every reason to believe that the remaining stages of the current session would be successfully concluded with the adoption of the Convention. But much difficult work still remained to be done and the United States and its closest allies were still pressing for radical changes in Part XI in order to protect their one-sided interests. Their efforts were being disguised with arguments concerning the need for universal acceptance of the convention. The alignment of forces in the Conference showed, however, that the overwhelming majority of participants supported only such general acceptance as would preserve the "package" of agreements in the draft convention which placed all of them in an equally advantageous position. His delegation would continue to support that line as the only correct one.

64. His delegation assessed the specific documents submitted by the President and the Chairmen of the Committees primarily in the light of their consistency with the mutual understanding already achieved and reflected in the draft convention. Any proposals which destroyed the carefully balanced "package" of proposals in the official text would be unacceptable. His delegation therefore supported the proposals in the report of the Chairman of the Second Committee (A/CONF.62/L.87). It was neither necessary nor possible to make any amendment or addition to those provisions of the draft convention which fell within the competence of the Second Committee. His delegation also supported the proposals in the letter from the Chairman of the Third Committee (A/CONF.62/L.88).

65. In view of the importance of reinforcing a compromise achieved with so much difficulty, his delegation could also

[6] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XII (United Nations publication, Sales No. E.80.V.12).

[7] *Ibid.*, vol. XV (United Nations publication, Sales No. E.83.V.4).

support the revised solution to the question of participation in the convention although, to be frank, it was not satisfied with the solution proposed to the question of participation by national liberation movements recognized by the United Nations. Those movements, and the Palestine Liberation Organization in particular, must be given the status of full participants in the convention. He would also have preferred the retention of the well-known "transitional provision".

66. As to the participation in the convention of international organizations to which member States had transferred some of their rights over matters governed by the convention, it was worth emphasizing that, with some reservations, his delegation could agree to the formula that such participation should be possible only when a majority of States members of a given organization had acceded to the convention. The same approach should also be followed if the convention was denounced, but unfortunately that point was not yet covered in the draft.

67. His delegation considered various provisions in the draft resolution establishing the Preparatory Commission to be acceptable but had some comments to make. It understood the provision to the effect that the rules of procedure of the Third United Nations Conference on the Law of the Sea should apply when the Preparatory Commission was taking decisions on procedure to mean that the Commission would establish its specific procedure for adopting decisions on questions of substance on the basis of consensus; and that only in exceptional cases, if a consensus could not be achieved, would it resort to decision-taking by a two-thirds majority. His delegation was ready to agree to that approach if the Collegium provided in its memorandum (A/CONF.62/L.93) that the Commission would adopt the draft rules, regulations and procedures for activities in the Area by consensus.

68. The draft resolution governing preparatory investment (A/CONF.62/C.1/L.30, annex II) was a demonstration of goodwill by the Group of 77 and his delegation approved of the fact that it reflected the most important principles essential for such a document: the immutability of the fundamental principles of Part XI, the necessity for States to sign the convention as a condition for obtaining the privileges granted to pioneer investors on the entry into force of the convention, etc. His delegation was therefore prepared to support the compromise document.

69. With regard to the report of the Chairman of the First Committee (A/CONF.62/L.91), he emphasized the unacceptability of any of the proposed changes in the articles of the draft convention concerning the composition of the Council and its procedures for adopting decisions.

70. In conclusion, he was convinced that the unity of the overwhelming majority of participants in the Conference would be preserved in the concluding stages and hoped that a spirit of realism and goodwill would be shown by the United States and those of its partners who were striving to destroy the compromise "package". The session must be able to end successfully with the adoption of the convention by consensus, or by a vote if the United States and some of its allies ignored the opinion of the overwhelming majority and deliberately opposed the international community. Adoption of the convention would be a significant contribution towards strengthening international co-operation in exploiting the seas and oceans for the benefit of all mankind, with particular regard for the needs of developing States. The convention would become an important long-term prerequisite for strengthening international peace and security.

71. Mr. MAINA (Kenya) said that his delegation would continue to co-operate in the efforts to conclude the convention by 30 April 1982 and therefore fully supported the report of the Chairman of the Drafting Committee. It had no comment to make on the letter of the Chairman of the Third Committee (A/CONF.62/L.88) whose work had been successfully completed, and it concurred in the broad conclusions reflected in the report of the Chairman of the Second Committee (A/CONF.62/L.87). It was prepared to accept the new formulation of articles 74 and 83, dealing with delimitation of the exclusive economic zone and continental shelf between States with opposite or adjacent coasts, and was willing to support the amendment of article 60, paragraph 3, proposed by the United Kingdom (C.2/Informal Meeting/66), in the interest of consensus.

72. As to the first of the two main outstanding issues, that of participation in the Convention, his delegation welcomed the proposals in the report of the President of the Conference (A/CONF.62/L.86) as offering good prospects for a compromise, although it was disappointed by the refusal of other delegations to accept full participation by national liberation movements recognized by regional organizations and the United Nations. Similarly, it was prepared to accept the draft resolution in annex III of the same document as a solution to the question of protecting the right of inhabitants of Non-Self-Governing Territories, although it would have preferred the original solution of including a transitional provision in the convention itself.

73. On the second outstanding issue, that of the draft resolution establishing the Preparatory Commission, his delegation was willing to accept the new text in document A/CONF.62/C.1/L.30, annex I, but underlined the significance it attached to the problems of land-based producers referred to in paragraph 5 (*i*) thereof. It also wished to record its appreciation for Jamaica's strenuous efforts to ensure the necessary facilities for the Preparatory Commission's meetings.

74. With regard to the remaining question of the treatment of preparatory investments in the exploration of the Area, the proposals in document A/CONF.62/C.1/L.30, annex II, were yet another example of the concessions made by the Group of 77 in the interest of having a universally acceptable convention. His delegation was therefore prepared to accept them against the background outlined and subject to the comments made by the Chairman of the Group of 77.

75. As to the problems likely to be encountered by the developing countries which were land-based producers of the minerals to be extracted from the sea-bed as a result of deep-sea mining, the studies provided for under the mandate of the Preparatory Commission would not suffice in the absence of practical measures to combat adverse effects on the economies of those countries. For that reason, his delegation lent its full support to the proposals of the Group of 77 for modest amendments to article 163, paragraph 4 (WG.21/Informal Paper 23), and article 171 (A/CONF.62/L.116) concerning, respectively, the composition of the Economic Planning Commission and the creation of a compensation fund for the benefit of those countries.

76. Finally, Kenya believed that no effort should be spared in examining genuine concerns or difficulties which might make it impossible for any delegation to be a party to the convention. That was particularly true with respect to the delegation of the United States. The Conference had not refused to listen to anyone and so it was a matter for regret that the United States delegation had not found it possible to modify its position in order to accommodate the concerns of others. He therefore appealed to it to join in the search for a solution satisfactory to all within the next few days, so that the Conference could adopt a truly universal convention by 30 April 1982.

77. Mr. LACLETA MUÑOZ (Spain), drawing attention to the importance of achieving a universally accepted convention offering a proper basis for peaceful coexistence and appropriate exploitation of the resources of the oceans, said that annexes I and II to document A/CONF.62/C.1/L.30 constituted acceptable bases for a final compromise solution

to be adopted by consensus, although his delegation believed that all signatories of the final act must be entitled to participate fully in the work of the Preparatory Commission and that the expenses of that Commission should not be borne by the regular budget of the United Nations.

78. Despite the fact that there had practically been no discussion on the difficult question of Part XI of the draft convention, document WG.21/Informal Paper 21 and Add.1 contained valuable suggestions which might lead to a compromise. Spain, a member of the group of medium-sized industrialized countries, was deeply concerned at the failure so far to take its situation into account. While classified as a developed country according to the generally accepted criteria, it lacked the technical and financial resources of the major industrialized Powers but was nevertheless expected to make a substantial contribution to the entry into operation of the parallel system without receiving commensurate compensation. It had made great sacrifices in the course of the protracted negotiations but had received little in return. On the other hand, the very fact that the convention would be world-wide in scope and guarantee peace, security and universality was sufficient justification for its adoption.

79. His delegation was particularly concerned with the problem of the membership of the Council. Medium-sized industrialized countries were also at a disadvantage in other respects, for instance in the reservation of a series of areas for activities conducted under the auspices of the Authority through the Enterprise or in association with developing States. The convention should not rule out the possibility of medium-sized industrialized countries participating in such associations with the Enterprise.

80. Document A/CONF.62/L.86 in the question of participation in the convention provided an appropriate basis for a consensus, even though he had reservations with regard to paragraph (*d*) of the text proposed in annex I for article 305. He also had a difficulty with the text proposed in annex III for a draft resolution, particularly with paragraph 2. Naturally those objections did not relate to the replacement of the transitional provision in the draft convention by a resolution but were confined to the text of the resolution itself. On the other hand, he believed that the report by the Chairman of the Second Committee (A/CONF.62/L.87), particularly paragraphs 6 to 8, accurately reflected the informal discussions of that Committee. His delegation had no objection in particular to the incorporation of the proposal submitted by the United Kingdom on article 60, paragraph 3 (C.2/Informal Meeting/66). As to the proposals relating to articles 123, 62 and 21, the position of his delegation remained unchanged, since, while it could understand the concern expressed over article 21, it found the text of the draft convention acceptable as it stood.

81. As he had already indicated in the Second Committee, his delegation had a few changes to make to the views it had expressed in document A/CONF.62/WS/12 of 26 August 1980,[8] regarding matters pertaining to the terms of reference of that Committee. Firstly, it wished to withdraw its statements regarding the delimitation of maritime spaces in articles 74, 83 and 298, paragraph 1 (*a*), which it now accepted in a spirit of compromise with a view to facilitating a final consensus. It also accepted article 304 as incorporated in Part XVI which would at least remove some of the difficulties still remaining in connection with article 42, paragraph 5. However, his delegation wished to maintain its comments regarding Part III of the draft convention. Its position with regard to straits used for international navigation was well known. In a spirit of compromise it had agreed at the fourth session held in New York in 1976 that maritime navigation should be subject to a new transit passage régime but it still had considerable difficulty with article 39, paragraph 3 (*a*), and with article 42, paragraph 1. It also maintained its reservations regarding articles 221, paragraph 1, and 233. All the reasons for those objections had already been given in the statement referred to earlier.

The meeting rose at 9.55 p.m.

[8] *Ibid.*, vol. XIV (United Nations publication, Sales No. E.82.V.2).

164th meeting

Thursday, 1 April 1982, at 10.05 a.m.

President: Mr. I. H. MWANANG'ONZE (Zambia)

Discussion of results of consultations and negotiations (*continued*)

1. Mr. BALETA (Albania) said that many democratic and progressive countries had come to the Conference with the hope and intention of drafting and adopting a convention which would defend, consolidate and develop the democratic principles of international law, as well as new progressive norms of the law of the sea which would safeguard the sovereign rights and legitimate interests of all States, particularly small countries, which were increasingly threatened by the aggressive policy and intrigues of the super-Powers and the imperialist Powers. Unfortunately, despite the major, positive results that had been achieved, the draft convention as it stood did not offer a just solution to some of the most important problems. There were still a number of serious weaknesses and shortcomings which had to be rectified. Some provisions had not been adequately discussed, others had been incorporated without the approval of the overwhelming majority, and some created situations unacceptable to many delegations.

2. For example, the problem of the breadth of the territorial sea had not been resolved in full accord with the recognized principles of international law or with the practice hitherto followed by sovereign States. His country had always upheld the principle of international law which enshrined the right of every State to determine the breadth of its own territorial sea. In laying down laws on the breadth of the territorial sea, the defence and national security interests of the coastal States must be paramount, especially at a time when peace- and freedom-loving countries were increasingly exposed to the aggressive activities of imperialism and to the tremendous threats posed by the military fleets of the United States, the Soviet Union and the aggressive military blocs. That was consistent with the position taken at Caracas; the establishment of the breadth of the territorial sea up to a limit not exceeding 12 nautical miles was therefore unjust.