Third United Nations Conference on the Law of the Sea

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164th Plenary meeting

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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.

3. Likewise, his delegation continued to oppose the idea that warships should have the same right of innocent passage through the territorial sea as merchant vessels. The relevant articles had to be modified and improved, so that article 17 would clearly distinguish between warships and merchant vessels. Provisions to ban entry into and passage through the territorial sea of the warships of another State, unless it had requested and obtained the prior authorization of the coastal State, were absolutely essential. Regrettably, in the course of the Conference, the just and reasonable position taken on that subject by a large number of countries had always met with obstructionism on the part of the imperialist super-Powers, which had resorted to manoeuvring and pressures of all kinds to prevent the inclusion in the draft convention of more precise provisions on innocent passage. The text as it stood seriously undermined the sovereign rights and national security of the coastal States. There was every reason therefore to resist pressure from the super-Powers and their groundless assertions that any addition or amendment to article 21 could bring down the whole edifice of the future convention. His delegation would certainly continue to support the demand for the necessary amendments to article 21.

4. He reiterated support for the view that the definition of the régime governing enclosed or semi-enclosed seas and the straits connecting them to the open seas should be principally a matter for the States bordering those enclosed or semi-enclosed seas, and should encompass all aspects of maritime activities, without discriminating against the legitimate rights and interests of other countries or impeding the navigation of merchant vessels. No activity involving warships belonging to countries other than the States bordering the enclosed or semi-enclosed seas should be allowed in those seas except in accordance with the rules laid down by all the bordering States. Unfortunately, Part IX of the draft convention did not meet those legitimate concerns.

5. His delegation objected to article 309 as currently worded. Sovereign States should not be denied the right to make reservations at the time of signature, ratification or accession to the convention; the matter should be governed by long-standing international practice in treaty matters.

6. The provisions giving mandatory jurisdiction to international bodies in the settlement of disputes between States were unsatisfactory. His delegation would prefer the well-tried principle that any dispute between States could only be referred to an international legal body with the prior agreement of the parties in dispute.

7. Lastly, he reiterated support for the right of national liberation movements to become parties to the convention.

8. Mr. DASHTSEREN (Mongolia) said that his delegation shared the view that the draft convention as it stood could serve as a good basis for the adoption of a truly viable and generally acceptable convention, particularly in the light of the balanced package that had emerged on such issues as the Preparatory Commission, participation and rules to govern preparatory investment in pioneer activities relating to polymetallic nodules. The proposals contained in documents A/CONF.62/C.1/L.30 and A/CONF.62/L.86 were generally acceptable, if not in all respects. For example, his delegation would have preferred a formula by which an international organization would be authorized to sign the future convention only when all its member States had done so. It would also have preferred to grant national liberation movements full rights to participate in the convention, although, in a spirit of accommodation and co-operation, it could support the President's five-point compromise in paragraph 16 of his report.

9. On the subject of the establishment of the Preparatory Commission, the text in document A/CONF.62/C.1/L.30 was a substantial improvement on the earlier version (WG.21/Informal Paper 17). While some of the provisions of the draft resolution raised minor difficulties, it could well meet the criteria established in document A/CONF.62/62[1] and thus be adopted along with the convention.

10. The adoption of the new text of the draft resolution governing preparatory investment in pioneer activities relating to polymetallic nodules (A/CONF.62/C.1/L.30, annex II) would also be possible: the clear definitions it contained provided adequate assurances to States that had voiced concern about the possible monopolization of enormous areas of the sea-bed by a handful of consortia.

11. The report of the Chairman of the Second Committee (A/CONF.62/L.87) again clearly demonstrated that no substantial changes could be made without upsetting the delicately balanced compromise on Second Committee issues.

12. The provisions relating directly to the rights and benefits of land-locked States were not entirely satisfactory to his country, but it was prepared to accommodate its own interests and expectations with those of the international community as a whole. In return, it expected all other participants, without exception, to act in the same spirit of goodwill, co-operation and mutual accommodation, and to conduct serious negotiations with genuine statesmanship. In that regard, he fully shared the views expressed by the Chairman of the First Committee at the 157th plenary meeting.

13. Convinced that there was a real prospect of adopting the convention by consensus at the conclusion of the current session, his delegation pledged its full co-operation in all efforts to bring the work of the Conference to a fruitful conclusion, even if it had to be done through the highly undesirable procedure of a vote.

14. Mr. EL GHARBI (Morocco) said that, during the last critical phase of its work, the Conference should be guided, above all, by the need to ensure the greatest good for the greatest number.

15. Part XI of the draft convention already bore the stamp of a carefully balanced compromise reflecting the position consistently upheld by his delegation and by the Group of 77 as a whole. The President's proposals on preparatory investment took a similar line, endeavouring to take into consideration the various interests without damaging the basic legal framework of the draft convention. His ingenious solution, in the form of a draft resolution, would ensure compliance with the basic law of treaties. However, its very title restricted its scope, yet failed to clarify the legal consequences of such a restriction. The draft resolution (A/CONF.62/C.1/L.30, annex II) would therefore have to be harmonized with the body of the draft convention in order to avoid any contradiction or ambiguity. Both would gain from linking the draft resolution to the definition of the resources of the Area given in article 133, unless expressly restricted to the case of polymetallic nodules.

16. Paragraph 8 (*a*) raised serious problems because in no case could the final resolution governing preparatory investment encroach upon the powers and competence of the Authority. The legal effect of the internationally guaranteed status of the pioneer investors would be limited to the period prior to the entry into force of the convention. That should not, however, prevent the Conference from recommending that the competent organs should take account in their decisions of the status accorded to the pioneer investors.

17. Consequential amendments to paragraphs 13 and 14 of the draft resolution would be required, although they should not detract from the formal guarantees offered.

18. As a land-based producer of most of the mineral resources mentioned in article 133, especially those contained

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

in polymetallic nodules, his country was highly sensitive to the adverse effect unbridled, large-scale exploitation of the sea-bed could have on the world economy, especially on the already fragile economies of the developing countries most closely concerned. While it would be in no one's interest to render the common heritage of mankind economically sterile, the opening up of the world's economic space could not take place in the lassez-faire manner of another epoch. In that spirit, it would be neither desirable nor appropriate to go back on the cut-off date of 1 January 1983 mentioned in paragraph 1 (*a*) of annex II to document A/CONF.62/C.1/L.30. As for the problem of compensation, he was convinced that a fair and workable solution could be found on which it would be possible to reach consensus. The negotiations on the Preparatory Commission had advanced at the current session and the President's latest draft defined both the specific character and mandate of that body. The guarantees proposed for pioneer investors would obviously involve a broadening of the competence of the Preparatory Commission, which during the transitional period preceding the entry into force of the convention would inevitably play the role of guardian of the common heritage, with all that that implied for the future signatories of the convention in terms of their rights, obligations and responsibilities under the law of treaties. Where the Council was concerned, his delegation urged more careful consideration of the proposals on articles 161, 164 and 165 resubmitted by Portugal, which his delegation had decided to sponsor.

19. Negotiations on participation had been more difficult but, like the Group of 77 as a whole, his delegation believed that, with some refinements, the President's proposals would prove generally acceptable. The participation of international organizations could certainly ensure a more effective system, provided that that could be reconciled with the primacy of the commitments undertaken by sovereign States in the framework of multilateral treaty-making. As far as participation of national liberation movements was concerned, his delegation remained firmly in support of the fullest possible participation for those recognized movements which had been invited to send representatives to the Conference. Their legitimate international status should be reflected in the texts ultimately adopted.

20. Where Second Committee issues were concerned, the most serious problems had been overcome at previous sessions; yet concerns of a purely bilateral nature continued to overshadow the search for a consensus in the multilateral context. Nevertheless, specific situations would somehow have to be taken into account in order not to do violence to the consent of the most seriously affected States. Despite the consensus reached on virtually all the major issues, the package of Parts I to X was still not firmly secured. The crucial issues which had long remained pending must be taken seriously in the spirit that had inspired the gentleman's agreement.

21. He deplored the systematic and indefensible refusal to negotiate on the proposals concerning article 21 despite the broad support that they enjoyed, and the fact that the principle of *jus communicandi* was no longer at stake, and on the Peruvian proposal on article 56 (C.2/Informal Meeting/67) and on the rearrangement of the articles in Part VII, section 1 (C.2/Informal Meeting/68); such a refusal was unacceptable.

22. Mrs. TNANI (Tunisia), commenting on various points that had been raised in the past few days, as well as on the draft convention as a whole, said that the draft resolution on the Preparatory Commission (A/CONF.62/C.1/L.30, annex I), though far from totally acceptable, provided a valid basis on which to build. Her delegation fully supported the proposals made by the Chairman of the Group of 77 on that subject; it likewise shared the Group's approach to the draft resolution on preparatory investment (*ibid.*, annex II), which it believed could be improved by avoiding any reference to the automatic granting of contracts to pioneer investors by the Authority, leaving the delimitation of the sectors to be exploited to the Preparatory Commission, introducing the idea that the exploitation of resources other than polymetallic nodules should not take place until appropriate regulations had been approved by the International Sea-Bed Authority, and reconsidering paragraphs 13 and 14.

23. The President's proposals on participation (A/CONF.62/L.86) could form the basis for a compromise, but should be improved by entitling the liberation movements to sign the final act and the convention and by annexing the draft resolution on the transitional provisions to the final act of the Conference. The proposals relating to the participation of non-State entities, particularly international organizations, were generally acceptable.

24. The solutions set forth in the draft convention on Second Committee issues represented a compromise which could well be threatened if any fundamental changes were made. Any proposal to improve the text should therefore be confined to clarification or precision, as was the case with the proposal contained in document C.2/Informal Meeting/66. Where the right of innocent passage of warships through the territorial sea was concerned, any compromise which brought the varying points of view together would enjoy the support of her delegation. Her delegation's interpretation of the term "coastal States" in article 70, paragraph 5, was that, in that context, it could only refer to the developed coastal States.

25. Her delegation would consider any improvement which would facilitate the adoption of the draft convention by consensus.

26. Mr. JESUS (Cape Verde) said that the overwhelming majority of States were clearly determined to have a convention on the law of the sea at the end of April 1982. His delegation would prefer the convention to be adopted by consensus but if the United States and a few other industrialized countries insisted on their proposed amendments, his delegation would join the majority in adopting the convention by vote. He felt that the draft convention protected the interests of all States, and, in particular, those countries which were questioning the provisions of Part XI, in the negotiation of which they had played a major role.

27. Turning to the report on First Committee matters, he said that the draft resolution on the Preparatory Commission was a balanced compromise. He supported the proposal contained in paragraph 11 that the Commission should meet at the seat of the Authority, considering the financial commitments already undertaken by the host country to make the necessary facilities available.

28. With regard to the draft resolution governing preparatory investment in pioneer activities, his delegation considered the proposal to be a framework in which the preparatory investment protection régime could be established. There were, however, some improvements which would have to be made if consensus were to be obtained. The resolution should cover all resources of the Area, as provided for in article 133. Therefore, his delegation would prefer the title contained in the similar document submitted by the Group of 77, "Draft resolution governing preparatory investments in the sea-bed area" (TPIC/3). He felt that paragraph 7 (*b*) would have to be altered so that pioneer investors should be required to invest a great deal more than $1 million per annum. The last sentence of paragraph 8 (*a*) should be deleted so that the Authority could consider freely applications made by a pioneer investor for a plan of work. Paragraph 10 (*b*), establishing the flag of convenience, was not quite acceptable to his delegation since it could endanger and frustrate the objectives behind the establishment of the preparatory investment protection régime. Paragraph 13 should be clarified in order to rule out any apparent contradiction.

29. As for Second Committee matters, his delegation was deeply concerned about the question of innocent passage of foreign warships through the territorial sea. There had never been any exhaustive negotiations on article 21 and the large number of delegations affected had long been asking for negotiations with the maritime Powers opposing the proposal contained in document C.2/Informal Meeting/58/Rev.1. He regretted that, during the consultations on the question, those delegations opposing the proposal had not displayed the necessary flexibility to engage in a compromise solution. International practice required prior authorization for the innocent passage of warships through the territorial sea and even some countries opposing the proposal imposed it under their own national legislation. His country could not accept the indiscriminate exercise of the right of innocent passage of foreign warships through its territorial sea and archipelagic waters. Although his delegation interpreted the current wording of article 21, in conjunction with article 19, as permitting the coastal State to legislate with regard to prior authorization, he urged the President to undertake further consultations on the issue in order to obtain a consensus.

30. The proposal contained in document C.2/Informal Meeting/58/Rev.1, of which his delegation was a sponsor, improved article 63, paragraph 2, and did not endanger the delicate balance of the text.

31. With regard to delimitation, his delegation considered that, although the text of articles 74 and 83 did not contain the draft which it would have liked, it considered the question to be settled and therefore would not accept any change or reservations on articles 15, 74 and 83.

32. With regard to the participation of national liberation movements, he said that the President's proposal (A/CONF.62/L.86, para. 16) was a positive approach. His delegation still believed, however, that national liberation movements recognized by regional organizations and the United Nations which were participating in the Conference as observers should be entitled to become parties to the convention.

33. As for the participation of international organizations, he agreed with the President's proposal in the sense that there was a common understanding that international organizations should become parties to the convention. However, in the particular case of the European Economic Community, the proposal raised a number of difficulties with regard to the juridical possibilities of preventing an international organization from implementing the convention in a way that would benefit a State member which was not a party to it. With regard to article 2 of the proposed annex IX (*ibid.*, annex I), he asked whether, in the case of the European Economic Community, it was juridically possible for only some of its members to transfer competence. It was his understanding that the competence transferred or to be transferred to the European Economic Community must have been agreed upon by all its States members and not by only some of them. Non-signatory States could not transfer competence they did not possess. With regard to article 4, paragraph 7, of the President's proposal, he wondered what rules would actually be applied by the Court of Justice of the European Economic Community in the event of a violation of the principle of non-discrimination contained in article 7 of the Treaty of Rome[2] by which the Community was established. He wondered whether it would feel bound by article 4, paragraph 7, of the proposal or by the laws of the Community. Similarly, in the case of a company belonging to the citizens of a State member of the European Economic Community not a party to the convention and whose registered office was within the Community, he wondered which rule would be applied—article 4, paragraph 5, of the President's proposal or article 58 of the Treaty of Rome, which stated that companies or firms formed in accordance with the law of a member State and having their registered office, central administration or principal place of business within the Community should be treated in the same way as natural persons who were nationals of member States. Another difficulty seemed to arise from the application of the law of the sea convention within the European Economic Community. According to his interpretation of articles 189 and 191 of the Treaty of Rome, for the convention to enter into force in the Community, it had to be published in the Official Journal and would be binding in all member States. Given those articles, he questioned the value and effectiveness of article 4, paragraph 3, of the proposal. His delegation would join in efforts to reach a compromise on the question, on the understanding that the European Economic Community would agree to alter its laws to bring them into line with the convention.

34. His delegation felt the transitional provision should be retained within the draft convention. The article was derived from the right to self-determination of peoples recognized by international law, mentioned in the United Nations Charter and elaborated upon in a number of General Assembly resolutions. He questioned the value of the draft resolution contained in annex III of A/CONF.62/L.86, since there were already General Assembly declarations on the matter. While supporting the retention of the transitional provision in the convention itself with the wording given to it by the proposal submitted by the Group of 77 under the title "Article 304 *bis*—territories under foreign occupation or colonial domination", his delegation proposed, in keeping with Article 73 of the Charter, the following wording for article 304 *bis*, paragraph 1: "In the case of territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations Trust Territory, or a territory administered by the United Nations, the rights recognized or established by this convention shall be exercised exclusively for their benefit."

35. Mr. HOUFFANÉ (Djibouti) said that, as far as virtually all the outstanding issues were concerned, his delegation supported the position of the Group of 77, which had made many concessions in a spirit of conciliation so that a universal convention might be adopted at the end of the current session. He endorsed the statement made by the Chairman of the Group of 77 regarding the Preparatory Commission, preparatory investment protection and participation in the convention (158th and 159th meetings).

36. His delegation was deeply concerned about innocent passage of warships in territorial waters and felt it was essential for the draft convention to include measures on the subject. His delegation therefore supported the content of document C.2/Informal Meeting/58/Rev.1, dated 19 March 1982, which would complement article 21 as it stood. He requested the Chairman to take the necessary steps to find a suitable solution.

37. With regard to the letter of the Chairman of the Third Committee (A/CONF.62/L.88), he felt that suggestions should be transmitted to the Drafting Committee if they did not have implications on the question of funds.

38. He considered that national liberation movements recognized by the United Nations and regional international organizations should accede to and sign the convention.

39. In conclusion, his delegation expressed the wish that a convention on the law of the sea would be adopted at the end of the current session.

40. Mr. MAHIOU (Algeria) said that the common heritage of mankind could be exploited only by an international régime accepted by the international community as a whole and, therefore, any unilateral action on the issue should be firmly rejected. It was up to the Conference to work out that régime and it should therefore finish the work entrusted to it

[2] United Nations, *Treaty Series*, vol. 294, No. 4300, p. 11.

and adopt a convention. He stressed that the wishes of the peoples in the developing countries, which had displayed a flexibility sometimes lacking in others, had not been fully satisfied. However, a difficult and delicate compromise had been reached and one could only deplore and reject manoeuvres or proposals to limit the democratic element of the future bodies of the Authority. Naturally, the legitimate interests of States must be taken into account and reasonable and practical solutions must be sought. That did not, however, mean that the existing inequalities should be perpetuated or made worse by allowing a tiny minority of States, possibly even one State, to neutralize or control any decision-making process.

41. The proposals on the Preparatory Commission seemed to be a good framework for achieving a consensus. There was, however, a certain ambiguity still surrounding the nature and the legal implications of the Commission's actions. As it moved from being simply a preparatory body towards a sort of provisional one, the Commission required special attention and any action it took could have implications which were difficult to assess at the current stage.

42. The draft resolution on preparatory investment needed further clarification and improvement on a number of points such as the nationality of investors, the size of sites and the implications for the power of the future Authority. Above all, hasty and provisional decisions should be prevented from becoming *faits accomplis* with which the Authority would be confronted; nor should improper privileges be accepted under the cloak of preparatory investment protection.

43. His delegation attached great importance to the participation of national liberation movements. Since one of the major innovations of the draft convention was, according to article 141, to take account of the benefit of mankind as a whole, it was logical and quite legitimate to ensure complete participation on the part of national liberation movements recognized by the international community as the authentic representatives of their people. That objective could only be achieved if participation was dealt with in the body of the convention and if it was applied to all organs provided for by the Conference. Furthermore, national liberation movements should sign both the final act and the convention.

44. The compromise reached on articles 74 and 83 was a decisive step forward to achieve consensus within the Conference. The effect of the reference to international law as referred to in article 38 of the Statute of the International Court of Justice was to give pre-eminence to the principles of equity, something which was logical and natural in order to achieve the "equitable solution" expressly mentioned in articles 74 and 83 of the draft convention.

45. Given that the search for equity was at the root of the Conference, it was regrettable that the régime of islands resulted, in certain cases, in a situation which was not equitable. By giving all islands the same maritime space and advantages, without taking account of the harmful effects on the delimitation of sea borders with neighbouring States, article 121 ran contrary to the general spirit of the draft convention. A distinction should be made between islands which were not affected by delimitation agreements and those which were. He stressed the contradiction in claiming equity in cases of delimitation *per se* while excluding it in the case of certain islands which created unacceptable distortions, particularly in narrow or semi-enclosed seas. He felt the Conference had been wrong to separate delimitation and the régime of islands, which were really two aspects of the same problem.

46. Turning to article 76 on the definition of the continental shelf, he said that it was one of the few provisions which justified the introduction of reservations in the draft convention. Certain special interests had received better treatment than others, with a small group of coastal States obtaining an improper extension of the continental shelf beyond the limits of the exclusive economic zone, while certain legitimate demands of a larger group of land-locked or geographically disadvantaged States had been obstinately refused. He questioned the appropriateness and the technical merit of the definition of the continental shelf, which created more problems than it solved. The system of contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles did not help promote an acceptable outcome.

47. The régime of innocent passage under article 21 should be improved to take into account the security and sovereignty of the States concerned.

48. He noted that the time had come to harmonize the terminology of the various parts of the convention by generalizing the use of the term "geographically disadvantaged States", which perfectly expressed the situation of a large number of States. His delegation approved the proposals aimed at improving the drafting of various provisions which came under the Third Committee.

49. The reference in the draft convention to the interests of developing States would be fully meaningful only if those States had real guarantees of technology transfer and effective protection for those who were land-based producers of minerals. The establishment of a compensation fund was a just and reasonable demand which should be met.

50. In conclusion, he said that, while the best outcome of the Conference would be the adoption of the convention by consensus, it being understood that reservations could be made with regard to certain provisions which did not concern the common heritage of mankind, the participating States should, in the absence of consensus, use their vote provided for in the rules of procedure to establish a new and equitable economic and legal order governing the seas and oceans.

51. Mr. PARK (Republic of Korea) said that, although some provisions had yet to be approved and modified, the current draft convention as a whole reflected the best possible compromise that could have been achieved. He hoped that all participating States would demonstrate a new spirit of compromise and accommodation for the successful conclusion of the Conference so that mankind as a whole might benefit from the new legal order governing the oceans.

52. With regard to document A/CONF.62/C.1/L.30, his delegation shared the view expressed by the Chairman of the Group of 77. He was gratified that the suggested compromise was fully compatible with the framework of Part XI of the draft convention, which had already been negotiated as a part of the package, although some provisions on preparatory investment protection seemed to require further elaboration.

53. As for participation in the convention, he supported the compromise proposal of the President in paragraph 16 of document A/CONF.62/L.86 on the understanding that the provisions concerning national liberation movements recognized by the United Nations and regional international organizations should be significantly improved.

54. With regard to the part of the draft convention dealing with sea-bed mining, he felt that the provision of Part XI and its related annexes, as they stood, struck a reasonable balance between the different interest groups of countries while embodying the fundamental principle of benefiting mankind as a whole. It would therefore be unrealistic to expect major changes in the basic system of sea-bed mining. His delegation was, however, concerned over the production policy. Due consideration should be given to the need for a stable supply of minerals at the lowest possible price, given the ever-increasing demand for natural resources, so that sea-bed mining might not be discouraged unnecessarily.

55. His delegation was also concerned about the composition of the Council. It felt that some developing countries which were heavily dependent upon the import of natural

resources for their economic development should be given the opportunity to represent their interests in the Council. The present provisions of article 161 did not seem to meet the needs of such countries. He supported the idea of increasing the number of seats in the Council for developing countries which were major importers of minerals or for the States to be elected on the basis of the principle of equitable geographical distribution.

56. Turning to Second Committee matters, he agreed with the assessment of the Chairman that there was a real consensus on the need to preserve the fundamental elements of the convention which were within the competence of the Second Committee. The Chairman had been right to exempt a few issues from the category of "satisfactory compromise". He felt that a system of prior notification should be adopted with respect to the innocent passage of warships through the territorial sea since such a system would meet the various preoccupations on the question, and thus offer the best possible formula for a consensus.

57. His delegation was not in favour of any proposals for further strengthening the rights of coastal States since it felt that those rights were fully secured and protected under the current provisions.

58. In conclusion, he stressed the need to adopt the convention by consensus within the current session.

59. Mrs. MAUALA (Samoa) said that her delegation strongly supported the text of proposed article 305 (A/CONF.62/L.86, annex I). In particular, it felt that subparagraphs (*b*), (*c*) and (*d*) satisfactorily represented the substantive interests of Samoa's South Pacific island neighbours. It was of great concern to her delegation that those subparagraphs should be included in the final text.

60. Participation was vital to small Pacific island entities, which, in many cases, depended for their whole well-being on their marine resources.

61. Mrs. TAVIRA (Angola) said that any régime governing the seas was crucial to world peace and security. The Conference had before it the laboriously negotiated text of a draft convention which was the result of repeated major concessions by the developing countries. Hence, Angola regretted the attitude of the United States, followed by certain industrialized countries, the only aim of which was to satisfy the unilateral interests of the transitional companies by radically changing Part XI of the draft convention. The provisions relating to production limitation, transfer of technology, the decision-making procedures of the Council and the role of the Assembly could not be changed without jeopardizing the survival of a number of underdeveloped countries as viable States. The economic sacrifices demanded of them would under the circumstances become too great to bear.

62. Angola attached great importance to the admission of national liberation movements as full parties to the convention. The developed countries had made a great effort to justify the participation of the Common Market in the convention and, if that position were accepted, they would have to revise their point of view with regard to the liberation movements. Recognition of the national liberation movements by regional organizations and by the United Nations meant *ipso facto* their recognition by the international community under universally acceptable norms of international law.

63. Consequently, her delegation regarded the participation of liberation movements and intergovernmental organizations as one whole with both categories becoming parties to the convention. Her delegation understood that international organizations should not accede to the convention unless their members had previously become parties. However, it was prepared to work around the present proposals contained in document A/CONF.62/L.86, in order to reach an agreement that was in the interest of both candidates for participation.

64. For the defence of the interests of peoples under colonial domination, it was necessary to include transitional provisions in the convention.

65. With regard to article 21 concerning innocent passage, her delegation considered it necessary, because of the requirements of State security, that warships using their right of innocent passage should give prior notice to the coastal States. Her delegation wished to be assured that coastal States would be protected by the machinery provided for in article 21, which, in fact, recognized the right of the coastal State to adopt laws and regulations in accordance with its security needs. With the improvements to articles 21 and 63 proposed by Argentina and other delegations, her delegation would have no difficulty in accepting Part II as it stood.

66. With regard to the question of preparatory investment, her delegation, while preferring the counterproposal of the Group of 77, accepted the proposal of the President (A/CONF.62/C.1/L.30, annex II), as a basis in which the changes proposed by the Group of 77 would be incorporated. It accepted also the draft resolution on the Preparatory Commission (*ibid.*, annex I) with the changes made in subparagraph 5 (*e*), which would protect the interest of land-based producers.

67. Guided by the principle that the Area was the common heritage of mankind and by the principle of the interdependence of States, her delegation appreciated the effort made to arrive at that draft resolution as a valid basis for a consensus. She hoped that the few reticent delegations would rally to the prevailing desire to complete the work of the Conference at the current session and adopt the final act. Otherwise, her delegation would accept the adoption of the text by voting, so that the convention could be adopted, as proposed, in September at Caracas.

68. Mr. MALONE (United States of America) said that the United States sought a universally accepted multilateral treaty on the law of the sea which met the six objectives outlined by President Reagan on 29 January 1982. It was prepared to explore every method of achieving that goal, and if, with the help of its colleagues at the Conference, it was successful, President Reagan was committed to seek early ratification of the resulting treaties. His delegation had specific comments and suggestions on the text proposed regarding the outstanding issues: the Preparatory Commission, preparatory investment protection and participation, and also on a number of issues relating to Part XI of the draft convention.

69. The proposals in document A/CONF.62/C.1/L.30, annexes I and II, would entrust the Preparatory Commission with powers and functions affecting vital national economic and security interests in access to deep sea-bed mineral resources. The Preparatory Commission would draft rules and regulations for deep sea-bed mining and would implement a system for preparatory investment protection. Those functions corresponded to the central functions of the Council which affected access to sea-bed mineral resources by States and their nationals. His delegation believed that annex I of document A/CONF.62/C.1/L.30 should be improved and proposed that the resolution on the Preparatory Commission should contain the following measures:

(*a*) All signatories to the final act would elect the members.

(*b*) The Conference would elect the members of an executive committee in accordance with article 161, with the proviso that the election should include the seven States which accounted for the largest proportion of assessments based upon the scale used for the regular budget of the United Nations.

(*c*) The Preparatory Commission would function in accordance with that resolution but would not take decisions until the 36 members of the Committee had signed the convention.

(*d*) If after six months not all elected Committee members had signed the Convention, the seats of such non-signatories would be declared vacant.

(*e*) As a general rule, Preparatory Commission decisions would be taken in accordance with article 161. However, it might be necessary to make certain adjustments to article 161 in the light of the decisions required by the resolutions proposed in document A/CONF.62/C.1/L.30.

70. He noted that the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30) indicated that the resolutions on the Preparatory Commission and on preparatory investment protection would necessitate consequential changes in the provisions of Part XI, such as article 308, paragraph 4, in order to ensure that the registration of pioneer investments, the allocation of pioneer areas to them and the priorities established would be binding on the Authority upon the entry into force of the convention.

71. The proposed resolution in document A/CONF.62/C.1/L.30 on preparatory investments represented a step forward in the work on that issue. Annex II of that document established a system which required that certifying States of pioneer investors should ensure that any overlapping claims were resolved prior to the time that applications were made. The Preparatory Commission would register applicants as pioneer investors and allocate pioneer areas to them once certifying States had notified it that any necessary conflict resolution process had been completed. His delegation welcomed that simple and effective approach to the problem of resolving overlapping claims among existing pioneer investors and took note of the wide support in the Conference for that approach.

72. He noted also that annex II of document A/CONF.62/C.1/L.30 adopted objective criteria for identifying pioneer investors, requiring an expenditure of $30 million, of which less than 10 per cent was spent on activities related to the location, surveying and evaluation of a pioneer area. The size of a pioneer area was limited to 150,000 square kilometres, thus allowing pioneer investors to determine the site of an area for which they would apply, provided that the pioneer area did not exceed 150,000 square kilometres.

73. Annex II of A/CONF.62/C.1/L.30 provided that registered pioneer investors should have the exclusive right to carry out pioneer activities in the pioneer area from the date of registration. It also provided that, upon the entry into force of the convention, the Authority should approve plans of work for exploration and exploitation for pioneer investors certified by the Preparatory Commission to be in compliance with the provisions of the resolution. It provided further that pioneer investors who altered their nationality and sponsorship should retain all rights and priorities conferred under the resolution. Thus, a pioneer investor whose certifying State failed to ratify the convention after entry into force maintained his rights by obtaining the sponsorship of a State party within six months.

74. While the foregoing provisions of annex II of document A/CONF.62/C.1/L.30 dealt with many of the elements necessary to protect existing investments in deep sea-bed mining, his delegation found annex II of that document to be lacking in other respects.

75. First, there was consensus during the informal negotiations that the primary purpose of a provision on preparatory investment protection was to provide site-specific recognition and rights to engage in activities for existing investors whose continued work depended on the early recognition of their exclusive rights in a specific area. A provision that did not give clear priority to those pioneer investors who had deposited the relevant co-ordinates with their national authorities prior to 24 April 1982 would be deficient. The resolution should distinguish between the rights and priorities accorded to current site-specific pioneer investors and those accorded to later pioneer investors who had made or who would make substantial investments prior to the entry into force of the convention.

76. In order to resolve that problem in the draft resolution, he proposed that subparagraphs 5 (*a*) and (*b*) of annex II should be recast in accordance with the text contained in his circulated written statement.

77. Secondly, the United States did not agree with the inclusion in the convention of a limitation on sea-bed mineral production. Accordingly, it did not believe that it should be incorporated in a provision on pioneer activities.

78. Thirdly, as had already been explained, pioneer investors who had made substantial site-specific investments required certainty that their exclusive rights to a mine site could not be revoked or abridged. But fundamental objectives would be undercut by any provision which terminated pioneer investor rights if the convention had not entered into force by a certain date. Accordingly, his delegation concurred with other speakers who had supported the deletion of paragraph 14 of annex II.

79. Fourthly, any data required to be turned over to the Preparatory Commission should be guaranteed protection for confidentiality of proprietary information.

80. Fifthly, his delegation considered that paragraph 12 of annex II created unwarranted and unnecessary burdens on pioneer investors in order to assist the Enterprise. That problem would be remedied by inserting, in the introduction of paragraph 12, the words "certifying States, co-operating as appropriate with" before the phrase "any registered pioneer investor shall:".

81. Sixthly, his delegation believed that subparagraph 7 (*a*) was improper and that the requirements of subparagraph 7 (*b*) bore no realistic relationship to the practicalities of mining company activities. His circulated statement contained the necessary changes proposed.

82. Seventhly, a further necessary consequential change in Part XI to implement that resolution was a provision requiring that the rules, regulations and procedures of the Authority, in so far as they applied to pioneer investors, should not impose significant new economic burdens which would have the effect of preventing a pioneer investor from continuing on a viable economic basis.

83. Eighthly, he understood that some delegations intended to make a proposal for the commencement of commercial exploitation in 1988, if the convention had not entered into force by then. Such proposals would be consistent with United States policies, and his delegation could support them.

84. There were a number of drafting difficulties relating to annex II which he assumed could be clarified and redrafted on the basis of further consultations on that resolution.

85. Successful resolution of the issues of preparatory investments and the Preparatory Commission could be the start of a successful effort to deal with the problems of the text of Part XI and related annexes. There should be no illusion that it would be the conclusion of such a process.

86. With regard to the report of the Chairman of the First Committee to the Conference concerning the request of several African delegations that article 160 of the convention should be changed (A/CONF.62/L.91, para. 17) to provide that the Assembly should establish a compensation fund to deal with the adverse impacts of sea-bed mineral production on developing land-based producers, which would take into account the results of studies to be conducted by the Preparatory Commission, his delegation would be willing to explore methods for establishing a system of adjustment assistance which would replace the production limit set forth in article 151 of the draft convention.

87. His delegation took no position on the proposals (WG.21/Informal Paper 19) regarding the composition of the

Council sponsored by a group of smaller industrialized countries pending consideration of the issues raised by the United States concerning representation on the Council for the largest financial contributors.

88. His delegation did not consider appropriate the proposal contained in Informal Paper 20 of the working group of 21 relating to unfair economic practices.

89. With regard to participation, his delegation appreciated the President's efforts to find a solution to that difficult problem. His delegation had, however, some concerns with his proposals (A/CONF.62/L.86, annexes I to III), and hoped that the President would take them into consideration. They were set forth in his circulated statement.

90. The United States was opposed to returning the transitional provision to the body of the convention and felt that the issue involved could be best dealt with in the form of a separate resolution.

91. The report of the Chairman of the Second Committee (A/CONF.62/L.87) indicated that there was widespread agreement that the proper and delicate balance that had been achieved within the Second Committee package must be preserved. He referred delegates to his circulated statement for details.

92. With regard to the letter of the Chairman of the Third Committee (A/CONF.62/L.88), his delegation had certain changes which it felt desirable in that connection. Other matters therein could be handled by the Drafting Committee.

93. The Conference had afforded his delegation an opportunity to raise its concerns regarding certain aspects of Part XI of the draft convention. It had not yet had an opportunity to explore solutions to them which met the objectives set forth by President Reagan on 29 January 1982. His delegation was anxious to begin substantive negotiations and awaited the President's guidance as to how to proceed.

94. In the President's report to the plenary at the 157th meeting, the President and the Chairman of the First Committee had referred to a series of proposals put forward by the group of 11 heads of delegations acting in personal capacities. Those proposals addressed many of the issues raised by President Reagan on 29 January 1982 and offered suggestions relating to the following matters of concern to his Government: the approval of contracts; production policies, including the question of limitations and adjustment assistance; the question of the election of the Council of the seven largest contributors; decision-making; the question of the adoption of amendments to the convention arising from the Review Conference; the powers of the Assembly and Council—the separation of powers; transfer of privately owned technology; and the adoption of rules and regulations on minerals other than polymetallic nodules.

95. On several of those matters, the proposals focused on narrow aspects of broader United States concern. With respect to production policies, they might not presently be sufficiently broad to allow negotiations relating to the production limitation or adjustment assistance. The proposal on decision-making addressed only the question of approval of the budget of the Authority, without reference to other important problems in the decision-making system.

96. The proposals did not seem to contemplate discussion of the relationship of creditors to the Enterprise, an issue on which further consultations would be helpful. The proposals did not deal with the technical financial terms of contracts or the question of benefits for peoples who had not achieved self-governing status.

97. His delegation greatly appreciated the work of the group of 11 and hoped that, with the clarifications and additions which he had suggested, they could serve as a basis of the continued work of the Conference. His delegation was prepared to participate in any forum which the President believed was suitable for further negotiations and would expend every effort to achieve the common objective of a universally accepted convention adopted by consensus at the current session. If the Conference succeeded in attaining that goal, the United States would be prepared to expend every effort to fulfil President Reagan's commitment to seek early ratification of the convention on the law of the sea.

98. Mr. BEESLEY (Canada) said that, while he would concentrate on the three major agenda items, he felt it appropriate to place his statement in a broader context, owing to his delegation's concern at the apparently widespread belief outside the actual Conference that the Conference was all about sea-bed mining and little else. That was a very dangerous misconception.

99. In a major foreign policy address at the thirty-sixth session of the General Assembly on 21 September 1981,[3] the Secretary of State for External Affairs of Canada had emphasized that the Conference was not merely an attempt to codify technical rules of law but a resource conference, a food conference, an environmental conference, a marine science conference, an energy conference, a conservation conference, an economic conference, a maritime boundary delimitation conference, a territorial limitation and jurisdictional conference, a transportation, communications and freedom of navigation conference—a conference which regulated all the uses of the ocean by humanity. More importantly, it provided for the peaceful settlement of disputes concerning the oceans and was a conference dedicated to the rule of law among nations.

100. He stressed that it was not a conference which should be looked on from the narrow perspective of sea-bed mining, important though it was. Decisions based on that kind of tunnel vision view of the draft convention would inevitably be misguided and imbalanced.

101. In that same statement, the Secretary of State had said that, in the general attempt to advance the rule of law at the Third United Nations Conference on the Law of the Sea, he wished to associate himself with the statement made by the Secretary-General at the opening of the tenth session of the Conference on 9 March 1981.[4] The Secretary-General had said that, apart from the achievement of the specific objectives of that Conference, he attached the highest importance to the impact which its success might have in strengthening the role of the United Nations in finding viable solutions to great global issues. The Secretary of State had said further that the Conference ranked in importance with the San Francisco Conference which had founded the United Nations itself. It represented an extremely important element in the North-South dialogue and had significant implications for peaceful East-West relations. It touched on the interests of every State, great or small, rich or poor, coastal or land-locked. The achievement of a universal agreement on a law of the sea convention was fundamental to world peace and security.

102. The compromise proposal on the Preparatory Commission contained in annex II of document A/CONF.62/C.1/L.30 was acceptable to his delegation. Utilizing the rules of procedure of the Conference as a basis for the Commission's rules of procedure was also a reasonable compromise. He was pleased that the Commission had been given the important task of studying the problems encountered by developing land-based producers most seriously affected by sea-bed mining.

103. With regard to the proposals of the President on participation contained in document A/CONF.62/L.86, there were few issues of greater difficulty or of more significance to the pol-

[3] See *Official Records of the General Assembly, Thirty-sixth Session, Plenary meetings*, 6th meeting, para. 29.

[4] 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), 142nd plenary meeting.

itical acceptability of the draft convention. He complimented the President on his success in surmounting yet another seemingly insoluble problem. The suggestions with regard to the participation of international organizations and national liberation movements were generally acceptable to his delegation.

104. Any régime governing investments in sea-bed mining made prior to the entry into force of the convention constituted a major concession to the pioneer sea-bed-mining States and must therefore meet two major objectives. First, from the point of view of the sea-bed miners, it must provide the pioneer investor with certainty that his investment would be recognized and provide the basis for the issuance of a production authorization when his plan of work with respect to a mine site had been approved. Secondly, from the point of view of the Group of 77 and many other States, it must be brought squarely within the framework of the policies and provisions of the draft convention dealing with the development of resources of the area, since otherwise it would defeat the convention that it was intended to complement. It was essential to ensure that all pioneer investors were treated in the same manner and that the text did not accidentally introduce any elements of discrimination between them. For example, the definition of the expression "pioneer investor" contained in article 1 (*a*) stated in part that a pioneer investor, to be recognized as such, must have spent "no less than 10 per cent of that amount in the location, surveying and evaluation of a specific portion of the Area". It was the understanding of his delegation that the words "a significant portion of the Area" did not refer to a single potential mine site or even two mine sites, for the operator and the Enterprise, but that they might be interpreted as including a broader "Area" or even separate "Areas" which, taken together, could be considered as constituting a "specific portion of the Area". Companies, including Canadian companies, which had expended substantial sums in vital pioneering technological development activities carried out over extensive regions of the area beyond national jurisdiction should not be penalized because they did not jump the gun by staking out individual mine sites well before any authorization by the Conference to do so.

105. There was an alarming rumour which had spread through the Conference during the past few days to the effect that certain States intended to sign the "mini-treaty" in May 1982. A mere boundary agreement, going no further and published in the United Nations Treaty Series, would not raise serious problems, but his delegation's information, which it hoped would prove to be incorrect, was that at least one State had decided to press ahead with the mini-treaty without one word changed. He warned against the very serious consequences of any such action.

106. The production policies enshrined in articles 150 and 151 were clearly designed to encourage deep-sea mining, while at the same time phasing in deep sea-bed mining in the interest of lessening the inevitable disruptive effects of established patterns of land-based production and marketing. That provision had never been intended as a rigid control mechanism designed to stifle or prevent sea-bed production. The deletion of the production formula from the draft convention would seriously affect Canada's view of the convention and could raise serious doubts about Canada becoming a party to the convention in such event.

107. His delegation had sponsored, together with the Australian delegation, a proposal to introduce in the draft convention a provision to the effect that States parties should avoid unfair economic practices in the production, processing, transport and marketing of minerals and commodities derived from the resources of the Area. His delegation was puzzled by the fact that the staunchest opposition to that proposal came from the group of States which loudly professed their attachment to the free market philosophy. It was time to seek a resolution on the subject.

108. With regard to straddling stocks, there was a proposal by 45 delegations for a necessary change to article 63, paragraph 2, which he hoped would be incorporated in the final text of the convention.

109. With regard to laws and regulations of the coastal State relating to innocent passage, his delegation viewed with concern the proposal (C.2/Informal Meeting/58/Rev.1) by some nations to introduce a substantive change to article 21. Such a change could be a conference-breaker for maritime Powers and their allies.

110. On the other side of the coin, the debate on that article had also indicated how sharply views varied on what constituted customary international law. A definitive view could only come through a universally accepted convention, and any major maritime State which might be seriously considering remaining outside of the convention should recognize that a global United Nations convention on the law of the sea would be their only guarantee of protecting freedom of navigation. He would return to that point.

111. Speaking as Chairman of the Drafting Committee, he expressed appreciation to the Chairman of the Third Committee for the drafting suggestions contained in his letter to the plenary (A/CONF.62/L.88). His proposals were under consideration by the Drafting Committee.

112. The Conference was seeking to balance the interests of all and not just to make the rich richer and the poor poorer. The Conference was nearing the point of the balance of interests which could produce a consensus, and his delegation supported efforts to that end.

113. Mr. ADIO (Nigeria) said that, more than any other international instrument, the draft convention on the law of the sea furthered the goal of peace and happiness for all people.

114. He took note of the concern expressed by the Chairman of the Drafting Committee in his report (A/CONF.62/L.89) that its work was impeded by the absence of many delegations. Unfortunately Nigeria, as a developing country, did not have sufficient resources to participate in the work of that Committee.

115. Nigeria was satisfied with the drafting amendments suggested by the Chairman of the Third Committee in the document he had submitted (A/CONF.62/L.88) and with the suggested deferral of certain matters of a drafting nature.

116. Nigeria agreed that, as maintained by the Chairman of the Second Committee in his report (A/CONF.62/L.87), the fundamental elements of the Parts of the draft convention within the competence of the Second Committee must be preserved, although that did not exclude the possibility of introducing changes further on in the session that would facilitate wider participation in the draft convention. Nigeria also agreed that the only proposal of those made during the three informal meetings of the Second Committee which met the requirements established in document A/CONF.62/62[1] was that submitted by the United Kingdom concerning article 60, paragraph 3 (C.2/Informal Meeting/66). Regarding the proposal to amend article 21, Nigeria supported the position that prior notification and authorization should be required for the innocent passage of warships through the territorial sea.

117. Regarding the report of the President on the question of participation in the Convention (A/CONF.62/L.86), Nigeria believed that national liberation movements should be full parties to the convention and not merely observers; and that the transitional provision, discussed in paragraph 19 of the report, should remain as part of the convention rather than be made a resolution of the Conference. A related issue not mentioned in the report was the question of the deletion of the original rule 62 of the Rules of Procedure of the Conference. The original rule 62 would have permitted the participation of Namibia, and the question that now arose was whether Namibia could participate fully in the Conference and its organs. Although Nigeria objected to annex II of the

President's report for the reasons stated, annexes I and III were satisfactory.

118. Regarding the report on the three outstanding issues still before the Conference, contained in document A/CONF.62/C.1/L.30, the text of the draft resolution on the establishment of the Preparatory Commission contained in annex I was on the whole satisfactory, particularly since it made provision in paragraph 5 (*i*) for the Preparatory Commission to undertake studies on the problems of developing land-based producers whose economies would be seriously affected by sea-bed mining, and since it provided in paragraph 8 for the early entry into effective operation of the Enterprise. The reference to the venue of the Preparatory Commission in paragraph 11, however, should no longer be made conditional since Jamaica had said that facilities were available.

119. With regard to the treatment of preparatory investments, Nigeria agreed with the Cuban delegation that it constituted a recognition of unilateral legislation. The developing countries had decided to pay the price on the question of preparatory investments because they wanted a universal draft convention. Their concessions showed the good faith of the Group of 77. Most of the concepts in the draft convention were very far from the original basic position of the developing countries as expressed in the declaration of principles and the moratorium. An objective observer, noting how the Group of 77 had made every possible concession, would say that the draft convention, even without the provisions for protection of preparatory investments, benefited the industrialized countries more than the developing countries. Nigeria supported the addition of a new subparagraph (*f*) to article 171 of the draft convention dealing with the question of compensation to land-based producers. The merits of the draft resolution governing preparatory investment contained in annex II of report A/CONF.62/C.1/L.30 lay in paragraphs 1 (*a*), 3, 4, 6, 8, 9, 10 and 12. The other paragraphs needed to be improved. Nigeria was particularly impressed with paragraph 1 (*a*), because it provided for a cut-off period and thus regulated the number of those who would qualify as pioneers, and because it was consistent with the principles of production limitation and production authorization for which the Group of African States stood.

120. The revised text of the draft convention (A/CONF.62/L.78)[5] had been adopted by consensus at the 153rd meeting[5] at the conclusion of the tenth session of the Conference by all, including the United States. At the eleventh session, the United States had submitted proposals for changes in the so-called "Green Book" which were too extreme for negotiation, and the counterproposals by the group of 12 had not met with United States approval. Nigeria appealed to the United States and the other industrialized countries to save the convention by relaxing their positions and reducing their demands.

121. Mr. ZEGERS (Chile) said that before the draft convention could be adopted at the end of the session, the three pending questions would have to be resolved and renewed and imaginative efforts made to ensure its endorsement by all.

122. The proposals contained in document A/CONF.62/C.1/L.30 relating to the Preparatory Commission and the treatment of preparatory investments provided an acceptable basis for agreement on the remaining issues in conflict. The procedures for dealing with preparatory investments should be compatible with the draft convention and therefore limited to exploration alone. In view of the existing moratorium, commercial exploitation should not begin before the convention entered into force. His delegation had some doubts on the vagueness of paragraph 13, and on paragraph 10 (*b*) which authorized pioneer investors to alter their sponsorship. Should the proposals in the two draft resolutions contained in document A/CONF.62/C.1/L.30 be incorporated by consensus in the draft convention, it should be understood by all that an important step will have been taken towards a universally acceptable draft convention.

123. The fundamental elements of the draft convention must be preserved and there should at the same time be the possibility of changes permitting the participation of the countries most crucial to its effectiveness. Among the unalterable pillars of the draft convention were the concept of the common heritage of mankind, with all the consequences it entailed; the parallel system and the other basics of the sea-bed régime; and the production policies defined in the draft convention to permit and further the development of sea-bed mining without seriously affecting the interests of land-based producers sharing in the common heritage.

124. Chile endorsed the positions taken by the President in his report on the question of participation in the convention (A/CONF.62/L.86), and believed that particular consideration should be given to the drafting changes recommended in document A/CONF.62/L.88, and to the important work still being done by the Drafting Committee.

125. The reports of the Chairman of the Second Committee (A/CONF.62/L.87) and of the Chairman of the Third Committee (A/CONF.62/L.88) indicated that virtually no changes were needed in the basic text, with the exception of the new wording proposed for article 60, paragraph 3, and the proposed amendments to articles 212 and 216. No other changes at that late stage of the Conference seemed to be in order and it was likely that if they were submitted as amendments they would not receive the support required by the rules of procedure.

126. The eight-year process of negotiation by consensus had had the advantage of crystallizing what constituted customary law or custom in the process of formulation together with what could become treaty law. Given the character of the negotiations, it was necessary to observe the letter and the spirit of the final clauses which admitted no reservations or exceptions to the convention, thus safeguarding the solidity and permanence of the law it established, as well as the requisite unity and harmony of its provisions. Consequently, article 309 should remain intact and the footnote regarding pending questions should now be eliminated.

127. Disputes over sea and ocean rights should be settled in strict accordance with international law, as established in the draft convention and in treaties binding on the parties. The question of the settlement of disputes was inextricably linked to the substantive part of the draft convention and it would be difficult, again, to introduce any changes on that question at the present late stage. The provisions regarding settlement of disputes unquestionably marked a step forward in the progressive development of international law, even though it had not been possible to agree on a universally binding system which must be the objective of the international community if justice and peace were to be attained.

128. The pivotal point of the new law of the sea was, in all probability, the concept of the exclusive economic zone extending up to 200 miles, to which his country was unalterably bound since it had been the first ever to declare the concept in July 1947. Its *sui generis* legal character, distinct from both the territorial sea and the high seas, had been specific in the draft convention, which clearly recognized the sovereign rights of the coastal State over all economic activities within a distance of 200 miles, without prejudice to freedom of navigation and overflight.

129. Possessing a single strait used for international navigation, the Straits of Magellan, Chile was particularly interested

[5] 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).

in the part of the draft convention governing straits, which made explicit the interconnection between the geographical factor of direct and useful communication between parts of the high seas and the factor of habitual use.

130. The set of norms on delimitation of ocean spaces—which included substantive provisions, the question of the settlement of disputes and the preclusion of reservations or exceptions—constituted a delicate balance, achieved after exhaustive negotiations. Even though those norms had been accepted with difficulty by all, and only as a result of compromise, they had elicited a high degree of consensus and, for the good of the draft convention, should not be changed.

131. The draft convention before the Conference was a valuable and generally acceptable document, and his delegation was confident that it would be adopted by consensus at that session.

132. Mr. AL-KINDI (Oman) said that his delegation wished to express its views on matters of interest to coastal States, particularly those relating to their security. It endorsed the view that the fundamental elements of the package needed to be preserved and that proposals should not be made to upset them, just as proposals which would facilitate the process of adoption of the convention by the greatest possible number of States should not be blocked.

133. Serious consideration should be given to the question of innocent passage of warships through territorial waters. Oman had co-sponsored the proposal contained in document C.2/Informal Meeting/58/Rev.1, which would amend the text of article 21 of the draft convention to include the requirement that warships should obtain prior authorization for navigation through the territorial sea. Such a requirement was necessary to ensure that the right of innocent passage would not adversely affect the security of coastal States, especially the smaller ones such as Oman, and also to avoid any possible disputes over interpretation which smaller States could not afford. Such a clarifying provision would not and was not intended to interfere with the legitimate exercise of the right of passage, already guaranteed in the current version of article 21. His delegation considered the question vital, and therefore consultations on it should continue. Article 21 as it now stood did not enjoy the support of the large majority of the members of the Conference, as required by the rules in document A/CONF.62/62.[1] His delegation was ready to consider any proposal which would take into account the security considerations of the coastal States. An acceptable solution to that issue would greatly facilitate the ultimate adoption of the convention.

134. On previous occasions his delegation had expressed its reservations on certain provisions of the draft convention: on articles 34 to 43 concerning the passage of all ships through straits used for international navigation, since they did not take into account the security interests of the coastal States concerned; on articles 74 and 83, since they failed to lay down criteria for the delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts; and on article 309 which failed to provide a solution satisfactory to a large number of delegates and would stand in the way of universal acceptance of the draft convention.

135. As it had indicated earlier, his delegation supported the amendment proposed by the United Kingdom to article 60, paragraph 3 (C.2/Informal Meeting/66).

136. His delegation also concurred with the position taken by the Chairman of the Group of 77 on pending questions and on possible textual changes that could be made. On the question of participation in the convention, Oman still supported full participation by the national liberation movements recognized by the United Nations and by regional organizations, and felt that there was time to make the additions to the text proposed by some members of the Group of 77. Oman would have preferred that participation by intergovernmental organizations should be subject to commitment to the convention by all members of such organizations, to avoid any possible conflicts of interest between such organizations and their members on the one hand and the organizations and the international community on the other.

137. The Conference should adhere strictly to its programme of work so that the draft convention could be adopted at the end of the session. There was an obvious need to establish order in the oceans of the world, and a multilateral convention would go a long way towards achieving that goal.

The meeting rose at 12.55 p.m.

165th meeting

Thursday, 1 April 1982, at 3 p.m.

President: Mr. Z. PERIŠIĆ (Yugoslavia)

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

1. Mr. ANDERSEN (Iceland) said that his delegation was ready to support the approaches taken in the report of the President on the question of participation in the convention (A/CONF.62/L.86), and in the report of the co-ordinators of the working group of 21 (A/CONF.62/C.1/L.30) regarding the Preparatory Commission and the treatment of preparatory investments.

2. The Conference had been much criticized for taking so long to complete its work. Some of that criticism was due to a misunderstanding of the difficulties caused both by the complexity of the subject-matter and by the fact that there had been no voting. The effort to reach agreement by consensus had from the beginning presented formidable obstacles. Accordingly, he wished to stress for once the Conference's positive accomplishments.

3. As far as the matters dealt with by the Second Committee were concerned, a package solution was in being that enjoyed the support of the overwhelming majority of the international community. It embraced the sovereign rights of coastal States over the resources of the exclusive economic zone of 200 miles and of the continental shelf even beyond that distance in certain circumstances. A small number of further adjustments had been proposed which had gained considerable support. In that connection, his delegation was still in favour of the proposal contained in document C.2/Informal meeting/54/Rev.1, regarding the so-called straddling stocks (art. 63, para. 2), and of the proposal of the United Kingdom concerning ar-