

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

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/SR.165**

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

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

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.<sup>1</sup> 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-

ticle 60, paragraph 3 (C.2/Informal meeting/66). As a whole, the articles dealing with the exclusive economic zone could be said to have gained the status of customary international law even if the convention was not signed. For a nation like Iceland, whose economy was overwhelmingly dependent on the exploitation of the living resources of the exclusive economic zone, that result alone made the long struggle eminently worth while.

4. The articles on marine pollution and marine scientific research that had emanated from the Third Committee also enjoyed the support of the overwhelming majority and would be extremely helpful even in the absence of a convention.

5. His delegation, like so many others, had been looking forward to the adoption of the convention by consensus. As was well known, however, difficulties had arisen in connection with the matters dealt with by the First Committee, concerning the international Area. A great effort had been made by the group of 11 to bridge the gap which still remained. His delegation hoped that the proposals which had thus emerged would be helpful in making adjustments in the text that would make it easier to reach a consensus, and, should consensus not prove possible, would facilitate later participation by States which were not ready to sign the convention when it was opened for signature. Nevertheless, it fervently hoped that by the end of the session the Conference would be able to adopt the convention by consensus. All efforts must be devoted to that task.

6. Mr. SUJA (Czechoslovakia) said that his delegation shared the view expressed by many others that the most encouraging result of the Conference's deliberations so far was that the vast majority of the participating States were unambiguously in favour of the adoption of the law of the sea convention at the current session and, what was equally important, on the basis of the existing draft (A/CONF.62/L.78).<sup>1</sup> That general determination was still apparent despite some attempts to create obstacles and to subordinate the will of the Conference to the obstructive attitude of the United States. That attitude, supported to a certain extent by a limited group of other Western countries, still threatened to prevent consensus. Even the most recent statement of the United States delegation contained no new positive elements. Nevertheless, his delegation firmly believed in the ability of the Conference to overcome those artificially created obstacles and to move towards the accomplishment of its task in accordance with the agreed programme. The delegation of Czechoslovakia, together with the overwhelming majority of other delegations, was faithful to the agreements that had been reached after so many years of painstaking negotiation and had led to a fair and balanced draft convention.

7. It was, of course, desirable that the convention should be adopted by consensus and that all the countries participating in the Conference should become parties to it. If the United States and the few countries that supported it were to show a sense of responsibility, there would still be time to reach that goal. If that was not to be, however, Czechoslovakia joined the other socialist countries in maintaining that it was neither necessary nor desirable to yield to attempts to acquire unilateral advantages for any country and thus to sacrifice the common interest. If necessary, therefore, it was prepared to adopt the draft convention as a whole by vote, disappointing though that outcome might be.

8. The results of the negotiations on outstanding issues were a substantial step towards the successful completion of the Conference's work. The developing countries of the Group of 77 had made a very constructive contribution in that connection, demonstrating both the political will and the ability to

co-operate closely with other delegations with a view to arriving at a generally acceptable agreement. The outcome of the first three weeks of informal consultations, as reported in documents A/CONF.62/L.86 to L.90 and A/CONF.62/C.1/L.30, reflected a striving to bring together differing positions and prepare the way for the adoption of the convention in accordance with the agreed timetable.

9. His delegation, like others, had reservations and mixed feelings about a few important provisions of the draft convention. On the question of participation, it felt that the inalienable right of the national liberation movements recognized by the United Nations to become parties to international legal instruments was not properly reflected in the President's report (A/CONF.62/L.86). It also considered that the provisions of the draft resolution on the establishment of the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) regarding the Commission's rules, regulations and procedures for adopting decisions on matters of substance could be made clearer, and maintained that the rule of consensus should be strengthened. It would also prefer some more precise formulations in certain provisions of the draft resolution governing preparatory investment in pioneer activities relating to polymetallic nodules (*ibid.*, annex II). In particular, it foresaw difficulties over the interpretation of paragraphs 12 and 14.

10. Although not all of the provisions of the draft convention and the documents relating to it met his delegation's position fully, it had decided not to oppose them in order that the overall compromise should not be jeopardized. It was legitimate, therefore, to expect the same attitude on the part of others. The reports submitted by the Chairmen of the Second and Third Committees (A/CONF.62/L.87 and L.92) appropriately reflected the final stage of the negotiations on questions within the competence of those Committees. His delegation could support them as elements of the compromise, on the understanding that the existing package of agreements on the issues concerned was in no way questioned.

11. In conclusion, he emphasized his delegation's conviction that the draft convention on the law of the sea before the Conference took into account the legitimate rights and interests of all countries in the most balanced and equitable way possible. The completion of the draft and its subsequent adoption at the end of the session would serve as a powerful incentive for the strengthening of international peace and security and for the economic development of participating States, and his delegation was prepared to exert every effort to that end.

12. Mr. ABDEL RAHMAN (Observer for the Palestine Liberation Organization) said that his organization had been impressed by the positive spirit of most of the participants in the Conference, and appreciated their desire to reach an agreement that would be acceptable to all parties. The Palestine Liberation Organization, which had participated effectively in the work of the Conference at all sessions since the second session of the Conference in 1974, associated itself fully with the international community in its desire to achieve a convention that would protect the interests of all mankind in their common heritage, the wealth of the sea-bed.

13. His delegation had read with interest the compromise formulations proposed by the President in his report (A/CONF.62/L.86), particularly in respect of the participation in the convention of national liberation movements which had taken part in the work of the Conference and thanked the President for his efforts in that connection. The firm position of the Palestine Liberation Organization regarding the participation of liberation movements was that those movements which had taken part in the Conference represented their peoples, and that those peoples were the owners of their land, even if they were not actually exercising sovereignty over it for the time being because of an abnormal

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

situation stemming from its occupation by force by an aggressor. The national liberation movements, therefore, represented their peoples and their resources, which were the key elements on which their right to participate in the Conference was based. Furthermore, they enjoyed legal status as members of regional organizations and participants in the work of the United Nations. The Palestine Liberation Organization was a full member of the League of Arab States, the Non-Aligned Movement and the Group of 77. It enjoyed observer status with the Organization of African Unity and was a participating observer in the United Nations. It had also concluded international bilateral agreements on a fully legal basis with many countries in many fields of activity. The Palestine Liberation Organization had opened dozens of embassies in countries throughout the world which enjoyed diplomatic privileges and immunities on an equal footing with those of independent countries. Thus, the argument that national liberation movements were not able to play a full part was unfounded and had no legal justification, and it was being put forward for purely political reasons.

14. With regard to the details of the compromise formulae proposed by the President, he reiterated that the Palestine Liberation Organization seriously and sincerely desired to facilitate the achievement of positive results by the Conference. At the same time, the national liberation movements and their peoples must not be deprived of their right to full participation. Accordingly, he reaffirmed the right of the Palestine Liberation Organization to sign the convention on the law of the sea and the final act of the Conference. He also emphasized that it was entitled to take a full part in the Preparatory Commission and in the International Sea-Bed Authority and all bodies emanating from the Authority. Similarly, the liberation movements which had taken part in the Conference should be entitled to receive all documents and correspondence and to exchange documents with participating countries. Furthermore, a formula must be found which would ensure the right of the national liberation movements which had participated in the Conference to have recourse to the International Tribunal. Since the participation of the liberation movements was based on their representation of their peoples and resources, it was logical and necessary that they should have the right to recourse to justice in order to defend the interests and rights of their peoples on the same footing as all other parties. In addition to those general comments, the Palestine Liberation Organization would present specific proposals on participation in the appropriate setting.

15. Mr. ESSY (Ivory Coast) said that the Ivory Coast, like a number of other developing countries which had not participated in the work on the codification of the Law of the Sea in 1958, had greeted the advent of the Third United Nations Conference on the Law of the Sea with much satisfaction, and had participated actively in the work of the Conference ever since.

16. His delegation had already expressed its satisfaction at the unprecedented overall agreement that had been achieved with regard to the exploitation and management of the resources of the international Area of the sea-bed. That agreement was a well-balanced compromise achieved on the basis of multiple concessions. However, in the light of the great difficulties encountered during the negotiations and particularly of recent developments, it had to be recognized that that balance was very fragile.

17. His delegation was ready to accept the compromise proposals in document A/CONF.62/C.1/L.30. It regarded them as a good basis for further negotiation and as offering the prospect of consensus, although they were still capable of improvement. His delegation accordingly endorsed the remarks of the Chairman of the Group of 77 regarding those proposals as a whole (158th meeting), and agreed that, although the time-limit for negotiations had officially ended,

the door should not be closed to further attempts, in the hope of arriving at a universally accepted convention.

18. His delegation's position on the unilateral legislation adopted or about to be adopted by a number of industrialized countries in regard to the exploration and exploitation of the area of the sea-bed beyond the limits of national jurisdiction was quite plain. It reiterated its endorsement of the position of the Group of 77, as expressed in the resolution adopted on 29 September 1979 in New York by the Ministers of the Group of 77, and condemned any legislation which ran counter to the objectives of the new international law which was being drawn up and to the principle of the common heritage of mankind. It urged the countries concerned to be patient and to strive within the Conference to secure a universal convention as a demonstration of a new spirit of co-operation among the nations.

19. With regard to the decision-making machinery of the Council of the Authority, his delegation had already made its views known on the compromise that had been achieved on the Council's procedure. For many delegations, that had been one of the most difficult issues. The solution that had been agreed upon concerning decisions on the most important questions, apart from constituting a disguised veto, could, in his delegation's view, create an impasse in the Council and deprive it of the power to act promptly.

20. His delegation likewise found the result achieved in regard to the transfer of technology unsatisfactory. His delegation would have preferred article 144 to state explicitly that the technologies envisaged comprised those used for the mining, transport and processing of subsea mineral resources.

21. The production policy and its counterpart, the plan to compensate land-based producers, were not sufficiently protective of the fragile economies of the developing land-based producer countries. At the ninth resumed session at Geneva in 1980, his delegation had suggested a system for taxing the profits of contracting enterprises in order to finance the compensation plan. It should be possible to integrate the idea contained in paragraph 5 (i) of annex I of document A/CONF.62/C.1/L.30 into article 151, paragraph 4, by specifying such a source of finance for the plan.

22. His delegation welcomed the report of the Chairman of the Drafting Committee (A/CONF.62/L.89) on the continuation of its work during the second stage of the session. On the report of the Chairman of the Second Committee (A/CONF.62/L.87), he said that his delegation continued to have difficulty with the proposal of the United Kingdom for article 60, paragraph 3. While the existing paragraph 3 provided for the complete removal of abandoned or disused installations or structures, the proposal envisaged the possibility of only partial removal by the coastal State together with due publicity given by it to the status of the structure or installation for the benefit of other States. Such a procedure would serve to create not only an obstacle for shipping in general but a danger to fishing nets, and his delegation preferred the existing text. In a spirit of co-operation, however, if the majority of delegations supported the United Kingdom proposal, his delegation would not oppose it, provided it was combined with the more specific French amendment.

23. His delegation would support the drafting amendments proposed by the Chairman of the Third Committee in his report (A/CONF.62/L.92).

24. He expressed his delegation's gratitude to the Government of Jamaica for its efforts to provide the headquarters for the Authority with a view to facilitating the work of the Preparatory Commission.

25. The problems being dealt with by the Conference were closely interrelated. As the first President of the Conference, the late Mr. Amerasinghe, had said at the resumed ninth session in August 1980, it was virtually impossible for a con-

vention of such wide scope to be fully satisfactory to every participant in every respect. The Conference had agreed to abandon the search for perfection and had achieved results that fell within the realm of the possible. There could be no doubt that the new law of the sea would have a decisive impact on the long-awaited new international economic order, and more particularly on a new, more just and more equitable, international maritime order.

26. Mr. MWANANG'ONZE (Zambia) said that his delegation welcomed the draft resolutions presented in document A/CONF.62/C.1/L.30; they went a long way towards meeting the requirements set by the Conference for the establishment of a preparatory instrument for the organization of the Authority.

27. In the case of the draft resolution establishing the Preparatory Commission, in annex I of the document, his delegation supported the content of subparagraph 5 (i) concerning the undertaking by the Commission of studies on the problems which would be caused to developing land-based producers by the production of the Area and its responsibilities with regard to a compensation fund; such measures would be much needed by the developing land-based producing countries once deep sea-bed mining was under way and the inevitable adverse effects on their economies began to be felt. For that reason, his delegation also supported the proposal made by the Group of 77 for an amendment to article 171 of the draft convention, involving the addition of a new paragraph (f) on the setting up of a compensation fund (A/CONF.62/L.116). It still believed in the value of the proposal to establish a special commission to take charge of the organization of such a fund, similar to that to be created for the Enterprise. In addition, it supported the proposed amendment to article 163, paragraph 4, also put forward by the Group of 77 (WG.21/Informal Paper/23), to the effect that at least two developing land-based producing countries should be represented on the Economic Planning Commission, thus ensuring direct participation by those directly involved.

28. Most of the provisions of the draft resolution governing preparatory investment in pioneer activities (A/CONF.62/C.1/L.30, annex II) were very constructive; he hoped that the developed countries would regard them in the same light and be encouraged to join in the consensus. However, the definition of resources used in the resolution was too restricted; it should extend to all the resources covered by the definition in article 133 of the draft convention. Otherwise the undesirable situation might arise in which a consortium, having entered the Area specifically to exploit manganese polymetallic nodules, might incidentally have access to large quantities of other resources which were not covered by the regulations, an eventuality which might cause severe disturbance to the economies of developing land-based producers.

29. Further, if the minimum expenditure of \$US 1 million given in paragraph 7 (b) of the draft resolution was to be construed as a levy paid in order to retain entitlement to the pioneer area, he proposed that the figure should be raised to \$US 1.5 million so to deter certain consortia which might try to hold on to a site solely in order to prevent others from exploiting it. In the same context, the last sentence of paragraph 8 (a) should be deleted. The Authority should be more than a rubber stamp; applications for a plan of work should be considered and approved in accordance with the regulations laid down in the convention. Further, paragraph 10 (b) should also be amended, since as it stood it offered in effect, a "flag of convenience" to a consortium whose certifying or sponsoring State failed to sign or ratify the convention. While such practices were almost impossible to prevent, that was no reason for legalizing them, and consortia should not be able to create profits for nationals of a State which did not accept the convention. Paragraph 13 should also be rewritten or removed, because it sought to make the Authority subordi-

nate to the resolution, and paragraph 14 should be improved in order to prevent a situation in which a consortium might continue operating even after the entry into force of the convention.

30. The President's report on the question of participation in the convention (A/CONF.62/L.86) was an interesting and honest attempt to find a compromise solution. However, it was his delegation's view that national liberation movements should enjoy full participation in the convention and in the Area, which was expressly defined as "the common heritage of mankind", especially in view of the terms of article 140 of the draft convention, which stated that activities in the Area should take into particular consideration the interests and needs of peoples who had not attained full independence. The concept of the common heritage in that context had not been adequately discussed at the current session; he hoped that it would be taken up at a later stage.

31. He referred to the statement made by the representative of the United States of America at an earlier meeting to the effect that the United States Government continued to insist that the Conference should offer more compromise solutions if it wished the United States to join in the consensus on the draft convention. His delegation honestly believed that every effort had been made by the Conference in general to give the United States and other countries the chance to negotiate on the matters of particular concern to them. They should realize that the Group of 77 and other States in a similar position could not be pressed to grant further concessions when they had not achieved their own objectives. It should be impressed on the United States and on the developed countries in general that the aim of the developing world was not to damage their interests but, on the contrary, to co-operate with them in the service of mankind as a whole.

32. Mr. PINTO (Portugal) emphasized his delegation's readiness to accept the vast majority of the provisions of the draft convention, which it considered to be a balanced and harmonious solution of compromise. However, certain points remained which posed difficulties of substance and others which might be significantly improved while leaving intact the fundamental principles of the draft convention.

33. His delegation had no difficulty in accepting, as a compromise solution, the proposals of the President in his report on the question of participation in the convention (A/CONF.62/L.86), especially with respect to the problem of the national liberation movements. It would none the less like to see the concerns expressed by the representative of Belgium (160th meeting) on behalf of the European Economic Community, on the subject of article 4, paragraph 6, of annex IX, taken into consideration.

34. For matters dealt with by the first Committee, the proposals put forward in document A/CONF.62/C.1/L.30 by the co-ordinators of the working group of 21 on the Preparatory Commission and the protection of preparatory investments offered an acceptable basis for compromise.

35. His delegation had already given its support to the proposal put forward in document WG.21/Informal Paper/19 by a number of smaller industrialized countries concerning the revision of articles 161, 164 and 165 of the draft convention, on the composition of the Council, the Legal and Technical Commission and the Economic Planning Commission. Its own submission, in document WG.21/Informal Paper/22, was the outcome of a long series of endeavours to impress on the Conference the need for representation of the interests of migrant workers. His delegation continued to believe that the interests of those who would be employed in the Area, either by the Enterprise or by other entities of exploration, had not yet been given the minimum protection to which they were entitled. The contention that the solution of such labour problems should be the responsibility of the Authority ran counter to all the principles of national and international law

in the field, since it was not tenable for the Authority to be at one and the same time the sponsoring entity in the international Area and the defender of the interests of the workers in that Area. It was for those reasons that his delegation had called for a reference to labour to be included in the provisions relating to the Council and its organs, and for representation in the Council itself of those States recognized by the United Nations as being the major sources of migrant labour. He appealed to all States, and especially the great Powers, to show understanding of the problem; it was those workers to whom, to a large extent, they would ultimately owe the advantages to be derived from sea-bed mining.

36. His delegation had welcomed the return of the delegation of the United States of America to the negotiations and had studied carefully the proposals which it had submitted in document WG.21/Informal Paper/18. It had also given attention to the statements of the Group of 77 and studied its documents. The proposal of the heads of the Australian and other delegations (WG.21/Informal Paper/21 and Add.1) appeared to be motivated by a commendable willingness to produce a compromise between two positions. It was important as a fresh approach and inspired great hope for the continued possibility of achieving a universal Convention adopted by consensus. The same spirit could usefully be applied to the solving of all the issues outstanding concerning Part XI.

37. His delegation had no difficulty in accepting the conclusions of the masterly report by the Chairman of the Second Committee (A/CONF.62/L.87). As to the amendments submitted to the Committee during the current session, it reaffirmed its support for the United Kingdom proposal concerning article 60, paragraph 3 on abandoned or disused installations or structures. Further, the proposal made recently by the delegation of France appeared at first glance to be complementary to the United Kingdom proposal and might be considered in that light by the Collegium. In addition, his delegation considered that, while leaving intact the fundamental issues which had already attracted a consensus, certain other aspects of the questions which came under the Second Committee could be improved. For example, as already stated by the representative of India, it seemed reasonable for all archipelagos to be able to benefit from the régime established in part IV of the draft convention, which as matters stood applied exclusively to "archipelagic States". Similarly, the United Kingdom proposal (A/CONF.62/L.126) that paragraph 3 of article 121 should be deleted was worthy of support.

38. It was regrettable that the amendments recommended by the Chairman of the Third Committee had been sent directly to the President and the Drafting Committee and not first submitted to the Third Committee itself for consideration, since his delegation had reservations concerning a number of the proposed amendments, including those to articles 196, 216 and 222.

39. He expressed appreciation for the extremely difficult work of the Drafting Committee. His delegation would be indicating to that Committee certain discrepancies between the English, French and Spanish language versions of the draft convention which had come to light while it was being translated into Portuguese.

40. Mr. DIOP (Senegal) said that in its consideration of the draft resolutions in document A/CONF.62/C.1/L.30 his delegation had borne in mind the legitimate concerns of certain delegations which had difficulties in accepting some provisions of Part XI of the draft convention. While in general the results reflected in those resolutions were very gratifying, there were a number of improvements which might be made to consolidate the progress achieved and improve still further the prospects for consensus. First of all, the criteria for establishing pioneer investment status should be more carefully defined, in order to prevent dates and figures being set

without any legitimate basis. Further, the status of pioneer investors and certifying States in relation to the terms of the convention should be reconsidered, with particular reference to the powers of the organs of the Authority and the system of exploitation. In addition, the compromise solution, announced by the Chairman of the Group of 77, which would make it possible for land-based producing countries to minimize the adverse effects of sea-bed mining on their economies should be taken into consideration in the next stage of the work of the Conference. Lastly, paragraph 10 (b) of the draft resolution governing preparatory investment should be looked at again very carefully, with a view to discouraging the use of flags of convenience.

41. In connection with the question of participation in the convention, he welcomed the provisions relating to international organizations. He emphasized the need to establish a link between the field of competence of the individual international organizations and the matters dealt with by the convention, together with the requirement that all the member States of the organization must participate by signing the convention.

42. His delegation had always actively supported the national liberation movements and advocated their participation in the convention, and it therefore endorsed the position taken by the Group of 77 and appealed for an acceptable compromise to be devised. His delegation wished to draw attention to a legal lacuna in the existing provisions; as they stood, they applied only to liberation movements which signed the final act, indicating that no permanent machinery was envisaged for movements which might be formed after that date.

43. His delegation hoped that in the consideration of the system of exploitation, the balance of the parallel system, the transfer of technology and the decision-making procedures of the organs of the Authority it would be possible to maintain the precarious balance which had been achieved so as not to strip the concept of the common heritage of mankind of all meaning.

44. As to the transitional provision, his delegation had no objection to its being withdrawn from the text of the convention itself and established as a supporting instrument in the form of a resolution. However, that new form would not fundamentally alter the nature of the provision in question; the important point was that in contemporary international law the rights of peoples over their natural resources was a principle of *jus cogens*. Accordingly, the principle that the exploitation of the sea-bed should be to the benefit of colonial peoples was a peremptory norm of the law of nations. Ideally, the new paragraph should also have provided for follow-up action by the Secretary-General of the United Nations and effective machinery for that purpose.

45. He emphasized the importance of the issue of the delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts. The compromise formula embodied in the draft convention was sound and balanced, and impartial in that it made reference to Article 38 of the Statute of the International Court of Justice.

46. In conclusion, he emphasized his delegation's positive attitude towards the President's call for continued negotiations among all delegations of good will. The establishment of the International Sea-Bed Authority, responsible for managing the Area, the common heritage of mankind, was recognized by the waiting world as the first practical test of the North-South dialogue. It was a challenge to which all responsible delegations must respond by adopting the draft convention, in the interest of world peace and security and international co-operation.

47. Mr. MI-ENDAMNE (Gabon) said that, in view of their difficulties with the existing text of article 151, Zaire, Zambia,

Zimbabwe and Gabon had worked out a compromise formulation which they had intended to submit at the current session. However, because of the scant interest shown by other States, they had decided not to reopen negotiations on the question. Instead, they had proposed the addition to the draft convention of a provision whereby the Authority would establish a fund to compensate States whose earnings and economies would be affected by the exploitation of the resources of the Area. That flexible proposal, which reflected good will and a spirit of compromise, had not been favourably received and had been replaced by another, that reproduced in paragraph 5 (i) of the draft resolution establishing the Preparatory Commission (A/CONF.62/C.1/L.30, annex I). The Commission would thereby be instructed to undertake studies on the problems which would be encountered by developing land-based producers. Those studies would apparently be general studies of the kind frequently undertaken by United Nations specialized agencies and other bodies.

48. At the request of the African States, the Secretary-General of the Conference had prepared a preliminary report on the possible impact of the convention on developing land-based producers (A/CONF.62/L.84). The addendum to that report indicated the production ceilings for cobalt, manganese, copper and nickel, calculated, first, according to article 151 of the draft convention and, secondly, according to the proposal submitted by Gabon, Zaire, Zambia and Zimbabwe. In the French version of document A/CONF.62/L.84/Add.1, the figures in Table 1 for manganese should be stated as millions of metric tons, not thousands.

49. All the studies already carried out indicated that, in the short term and in the medium term, the cobalt and manganese industries would be seriously affected. The Secretary-General's preliminary report was, of necessity, neither precise nor comprehensive, because the required data would become available only after the sea-bed had been exploited for some years. It was unrealistic to believe that the Preparatory Commission, which would cease to exist even before the sea-bed mining began, would be able to bring those studies to a successful conclusion. In any event, the Preparatory Commission would simply be making recommendations, which could be accepted or rejected by the Authority.

50. Sea-bed mining would have very serious implications for all developing land-based producers. In the case of Gabon, the production and sale of manganese accounted for a substantial proportion of the country's export earnings and provided a livelihood for some 21,000 persons out of an economically active population of over 200,000. There should be a clear and unequivocal link between the convention, which would afford the sole juridical framework for a question of such importance, and the specialized organs of the Authority that would be responsible for certain specified tasks. His delegation urged that a provision on the establishment of a compensation fund should be included in the draft convention.

51. His delegation had serious difficulty with the definition of "pioneer investor" contained in the draft resolution governing preparatory investment (A/CONF.62/C.1/L.30, annex II). That definition discriminated between industrial entities in developed countries and those in developing countries. It was inappropriate to specify at the outset, for entities in developed countries, the amount that would have to be expended in pioneer activities, whereas for entities in developing countries the amount would be determined by the Preparatory Commission. That system could allow the entities in developed countries to take over, at lower cost, pioneer-activities sectors under the control of certain developing States. His delegation proposed that the final part of paragraph 1 (a), referring to the developing States, should be deleted.

52. The term "polymetallic nodules" in paragraph 1 (b) was too restrictive and should be replaced by the term,

"resources", within the meaning of article 133 of the draft convention.

53. In paragraph 1 (e), the area of 150,000 square kilometres should not be specified. That figure would inevitably be used by investors in applications for very large areas. The Preparatory Commission should be responsible for determining the area to be allocated to each investor. His delegation considered that paragraph 13 of the draft resolution was inappropriate and should be deleted.

54. As to the innocent passage of warships, his Government believed that the territorial sea was an integral part of the territory over which a State exercised full sovereignty. There was no reason why a coastal State could not deny foreign warships entry to that part of its territory. The question of innocent passage of warships was related to that of the military security of States. His delegation therefore believed that there should be notification and authorization prior to the passage of warships of one State through the territorial waters of another. Article 21 of the draft convention should be amended accordingly.

55. His delegation believed that the national liberation movements should be entitled to become full parties to the convention. That would be consistent with the preamble, which stated that the resources of the Area were the common heritage of mankind and that the convention would contribute to the strengthening of peace and promote the economic advancement of all peoples of the world.

56. Mr. CHARRY SAMPER (Colombia) emphasized his delegation's solidarity with the Group of 77, its concern at the attitude of the delegation of the United States of America, its support for the draft convention and its resolve to settle the outstanding issues.

57. He endorsed the President's informal proposals on the question of participation in the convention (A/CONF.62/L.86, annexes I, II and III). He particularly welcomed the fact that the provisions relating to the participation of international organizations would be applicable not only to such entities as the European Economic Community but also to the integrationist associations of the developing world. He was gratified to see that a number of his delegation's proposals had been incorporated in annex IX, and especially in article 2, article 6, paragraph 2, and article 8, which sought to define the nature and scope of such organizations in relation to the convention and to prevent States which were not parties to the convention from deriving undue advantage from it through membership of such an organization, or potentially provoking disputes and uncertainties.

58. His delegation readily accepted the draft resolutions in document A/CONF.62/C.1/L.30 and particularly endorsed the contribution of the Group of 77. The need to find generally applicable formulae embodying protection for existing and potential developing land-based producing countries, including his own, had been a long-term concern of his delegation, and from that point of view the proposals in annex I of the document represented a constructive compromise solution. The draft resolution on preparatory investment was also generally acceptable, but it had to be remembered that it was the outcome of considerable concessions on the part of developing nations. Those concessions had been made only for the benefit of entities of States which were parties to the convention; there was a need to tighten up a number of aspects which still gave cause for concern, including paragraphs 1 (a), 1 (e) and 7 (a), the treatment of pioneer investors dealt with in paragraph 8 (a) and the issue of "flags of convenience" raised by paragraph 10 (b).

59. His delegation agreed with the conclusion of the Chairman of the Third Committee in his report (A/CONF.62/L.92) that the substantive negotiations on Parts XII, XIII and XIV of the convention had been completed. No further changes

should therefore be made, except for the amendments of a purely drafting nature listed by the Chairman.

60. He emphasized the importance of the work achieved by the Drafting Committee and endorsed the conclusions of its Chairman in document A/CONF.62/L.89, subject only to an addition to article 320, on authentic texts, to the effect that, if doubts of interpretation arose, article 33 of the Vienna Convention on the Law of Treaties,<sup>2</sup> and especially paragraph 3 of that article, should be applied.

61. In connection with Second Committee matters, he endorsed the conclusion of the Chairman in document A/CONF.62/L.87, which had received the general support of the Conference, that there was a real consensus on the need to preserve the fundamental elements of the parts of the convention dealt with by the Second Committee. His delegation also agreed that, of the informal suggestions submitted to the Committee, the United Kingdom's proposal concerning article 60, paragraph 3, was the only one which met the requirements laid down in document A/CONF.62/62.<sup>3</sup>

62. He was gratified to note that the position of the Chairman of that Committee that it would not be desirable to reopen fundamental issues had been fully ratified by the Conference; there was indeed no possibility that reopening the discussion would lead to any improvement in the text or any broader consensus. Article 15, in particular, had been regarded as sacrosanct from a very early stage and neither of the two alternatives which had been spoken of, namely, redrafting article 15 using the language of articles 74 and 83, which was seen as a neutral formula, or permitting reservations, was acceptable to his delegation. The issue was not a redrafting matter, for it had been on the basis of the understanding that article 15 had been resolved in substance that consensus had been reached on the negotiated package regarding delimitation. Reservations were also precluded; the justification for them in the case of the Geneva Conventions on the Law of the Sea of 1958 did not exist in the case of the draft convention, the fundamental difference being that the new convention was a single, all-embracing instrument and was being considered on the basis of the principle, established by the Gentleman's Agreement, that all the issues which it governed were interlocking. Reservations were therefore inadmissible, and to permit them would be to risk seeing the draft convention founder under their weight. Article 309 as it stood provided an adequate safeguard for all the sacrifices and reciprocal concessions which had been made by delegations.

63. The final shape of articles 74, 83 and 298 had been accepted by his delegation with difficulty and as a last resort he would refrain from comment so as not to damage the fragile compromise achieved. However, his delegation continued to believe that compulsory and binding third-party settlement of disputes was the best guarantee for maintaining the rule of international law, disposing of disputes within a reasonable period and ensuring the equality of all States. In the event of any attempt to reduce the scope of the process of conciliation, in violation of the general compromise which had been achieved, it would insist on that procedure.

64. In conclusion, he acknowledged the right of all delegations to raise issues which were of particular concern to them, but emphasized that each individual delegation was under an equal obligation to respect the consensus which had finally been achieved. The agreed texts on the outstanding issues which had been subject to negotiations should be incorporated as soon as possible, so as to enable the draft conven-

tion, which his delegation fully supported, to be signed later in the year.

65. Mr. VARVESI (Italy) observed that, since the drafting of a convention which was acceptable to all States was the primary objective of the Conference, his delegation welcomed every serious attempt to reconcile conflicting views. The proposals in document A/CONF.62/C.1/L.30 and in WG.21/Informal Paper/21 and Add.1 could be approached in that spirit.

66. With regard to the draft resolution establishing the Preparatory Commission (A/CONF.62/C.1/L.30, annex I), a new paragraph had been proposed which would give the Commission powers and functions with regard to preparatory investments when such investments had yet to be assured of proper protection. Furthermore, by charging the Commission's expenses to the regular budget of the United Nations, States which were not members of the Commission would be sharing the burden of its financing, a situation which seemed less than equitable. Finally, his delegation believed that developing land-based producers would be better served by economic assistance, which would replace the system of production limits.

67. With regard to the draft resolution governing preparatory investment (A/CONF.62/C.1/L.30, annex II), his delegation was gratified that the Conference had acknowledged the concerns of States whose companies had already made such investments. As one such country, Italy wished to emphasize that the Conference must afford adequate protection to preparatory investment by guaranteeing access to seabed mining resources for entities which had already committed considerable technical and financial resources to their exploration. The draft resolution did not afford proper protection to all the entities concerned, however: while approval of plans of work was automatic, the issue of production authorizations was not. With regard to the identification of pioneer investors, his delegation could accept the cut-off date of 1 January 1983 but considered the overall formula to be too broad and likely to create uncertainty and even disputes. Moreover, preparatory investment protection must be afforded only to the few genuine pioneer investors. If it was extended to potential future investors, the convention would be virtually impossible to apply. The provision of the draft resolution must be considered within the context of Part XI, about which his delegation had always expressed serious reservations. The production limitation clause, the transfer of technology, the financial clauses of contracts, the financial aspects of the operation of the Enterprise, the composition, powers and decision-making procedures of the Council and the Review Conference were all provisions that required considerable improvement if machinery was to be created which would really operate in the common interest of both industrialized and developing countries.

68. In response to the successive proposals on that subject made by the United States delegation, a group of 10 heads of delegation had submitted suggestions which, although not totally satisfactory to his delegation, would none the less provide a point of departure in the right direction. His delegation hoped that the Conference would approach those fundamental issues in a constructive spirit so that a consensus might be achieved.

69. With regard to the report of the Second Committee (A/CONF.62/L.87), while the draft convention still required amendment on certain points, his delegation could, in a spirit of compromise, support the view of the Chairman of that Committee that the debate on fundamental issues should not be reopened for fear of disturbing the delicate balance that had finally been achieved. His delegation did, however, support the amendment proposed by the United Kingdom to article 60, paragraph 3, which would not disturb the overall balance. Any other change to the articles prepared by the

<sup>2</sup> See *Official Records of the Third United Nations Conference on the Law of the Treaties, Documents of the Conference*, (United Nations publication, Sales No. E.70.V.5).

<sup>3</sup> See *The Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).



Second Committee could only diminish the prospects of consensus.

70. The proposals discussed in the letter and report of the Chairman of the Third Committee (A/CONF.62/L.88 and L.92) would of course have to be considered by the Drafting Committee before they could be included in a revised draft convention. His delegation had some difficulty with the proposal regarding article 196, which would, it felt, change the meaning of that provision. The same was true of the proposals regarding articles 212 and 216, paragraph 1 (b), which seemed to imply that the expressions "ship" and "vessel" meant two different things in the convention when there was no basis in the Conference's work for such an assumption.

71. With regard to the question of participation (A/CONF.62/L.86), his delegation endorsed fully the views expressed by the representative of Belgium on behalf of the members of the European Economic Community. He none the less wished to reiterate that EEC participation was important for general political reasons and was in the interests of the convention itself.

72. Mr. PRANDLER (Hungary) observed that the fact that the Conference had succeeded in adhering to its programme of work for the session was a notable achievement and bore witness to delegations' political will to complete the work of the Conference without further delay. He hoped that that political will would continue to be in evidence in the coming weeks so as to ensure the adoption of the draft convention at the end of the session.

73. The Conference still faced tremendous difficulties, owing mainly to the intransigent and unrealistic attitude of the United States Government in attempting to revise all the major elements of the deep sea-bed mining régime of the draft convention. The overwhelming majority of the Conference could state with a clear conscience that no effort had been spared to accommodate the United States views and interests. In that connection he endorsed the comments made by the Chairman of the First Committee in paragraph 57 of his report (A/CONF.62/L.91) to the effect that no one had sought to isolate the United States and its four industrialized allies, but rather that their declared interests and needs had been central to the negotiations and that none of them could afford to turn their backs on provisions that they had worked out and over which they had joined in a consensus with other nations.

74. His delegation had listened closely to the statement by the representative of the United States at the 164th meeting. While it needed more time to consider the implications of that statement, it had been disappointed at the inflexible attitude of the United States delegation, which had reiterated the tenets of the "Green Book" (WG.21/Informal Paper/18) and had responded to an editorial in *The New York Times* with a press release that stated, *inter alia*, that "an enormous effort must be made by all countries in the next few weeks if the United States is to be able to sign and support this convention". Although he dared to hope that the United States was still willing to pursue the negotiations, he did not feel that it was up to "all countries" but rather the United States to make "an enormous effort" to meet the position of the overwhelming majority of the Conference in the next few weeks. His delegation was conscious of its obligation to assist in efforts to achieve a negotiated solution, but it was not prepared to concede unilateral advantages for any one country. His delegation earnestly hoped that the United States Administration would finally conclude that its national interests were best served by joining in a comprehensive and universal convention. The successful conclusion of the work of the Conference would enhance the importance of bilateral and multilateral negotiations in resolving global problems and would be conducive to lessening international tension and to peaceful co-operation among all States.

75. With regard to the report of the President of the Conference contained in document A/CONF.62/L.86, his delegation endorsed the idea of a package on the questions of participation by national liberation movements and intergovernmental organizations and the transitional arrangements regarding dependent territories, and was prepared to support the proposed provisions. It would have preferred provisions which gave better legal standing to national liberation movements, and it agreed with the representative of India that a specific reference should be made to the eligibility of the Council for Namibia with regard to participation in the convention. His delegation still maintained, however, that all members of an international organization must have become parties to the convention before that organization could accede to it. In that connection, it endorsed fully the principle stated in article 4, paragraph 5, of annex I of the report.

76. With regard to the report in document A/CONF.62/C.1/L.30, his delegation could in general accept the draft resolution establishing the Preparatory Commission, which greatly enhanced the prospects of achieving consensus. It welcomed the new provision on decision-making in paragraph 4 of the draft resolution, on the understanding that the procedure for adopting decisions on questions of substance would be determined by the Commission on the basis of consensus, while the two-thirds majority formula would be used only in exceptional cases.

77. Since it was aware of the importance which the developed industrialized countries attached to the protection of preparatory investment, his delegation accepted the proposals contained in the draft resolution in annex II of the report. It believed, however, that the provisions governing the financing of the Enterprise should be improved, in particular to ensure that the financial burden was borne by those who were conducting pioneer activities.

78. His delegation agreed fully with the conclusion reached in paragraph 13 of the report of the Second Committee in document A/CONF.62/L.87. That was why it had opposed firmly any change in the text of the draft convention which would upset the delicate balance and package-deal solutions reached by the Conference. It was particularly opposed to current attempts further to erode freedom of navigation and the rights of landlocked and geographically disadvantaged States. The landlocked States had been compelled, for the sake of compromise, to accept a large number of provisions affecting their rights in the exclusive economic zone and continental shelf which were detrimental to their interests. His delegation was strongly opposed to any further weakening of Part X of the convention.

79. With regard to the report of the Third Committee, his delegation agreed that the drafting proposals contained in document A/CONF.62/L.88 should be dealt with by the Drafting Committee and endorsed the recommendations and conclusions of the Chairman of the Third Committee as contained in document A/CONF.62/L.92.

80. Mr. SHASH (Egypt) said that the report of the President on the question of participation (A/CONF.62/L.86) reflected a commendable effort to bring positions closer together. The informal proposals on the participation of national liberation movements were not satisfactory. His delegation still maintained the view that such movements should be allowed to be full parties to the convention, which governed the common heritage of mankind and affirmed the rights and interests of peoples. The full participation of national liberation movements in the convention was required by the various provisions of the draft convention, including articles 136, 140 and 162. That view was strengthened by the legal status which those movements had acquired with the contemporary development of the provisions of international law and within the framework of the United Nations.

81. The so-called "transitional provision" contained in annex III to document A/CONF.62/L.86 should be inserted in the text

of the convention itself; nothing justified its issue in the form of a resolution of the Conference.

82. He hoped that, with further exchanges of views on the basis of document A/CONF.62/L.86, agreement could be reached on amendments to the President's proposals on the question of the participation of both national liberation movements and international organizations.

83. With regard to document A/CONF.62/C.1/L.30, which contained two draft resolutions on the Preparatory Commission and preparatory investment, his delegation agreed with the comments made by the Group of 77 (158th meeting). The draft resolution on the Preparatory Commission constituted the best basis for efforts to achieve a consensus. His delegation agreed that the Commission should consist of representatives of States which had signed the convention or acceded to it and that its expenses should be met from the regular budget of the United Nations.

84. Some of the provisions of the draft resolution on preparatory investment required revision, and there should be further exchanges of views in order that balance and co-ordination might be achieved between that régime and the principles and provisions of Part XI of the convention and the annexes.

85. With regard to the report contained in document A/CONF.62/L.87, his delegation's attention had been caught by the statement regarding the proposal of a number of delegations, including his own, concerning innocent passage of warships through the territorial sea. That was a matter of great importance to his delegation and to many other delegations at the Conference. Perhaps the statements made by a large number of delegations in plenary meetings during the past three days indicated the degree of concern felt by many States, including Egypt, because of the existing text of article 21 of the draft convention.

86. Although the provisions of the draft convention recognized the rights of coastal States to enact legislation governing innocent passage of warships through their territorial sea in order to protect their security, his delegation had been concerned from the start to introduce an amendment to article 21, in order to remove any ambiguity which might subsequently give rise to a difference of interpretation. His delegation had joined with a number of other delegations in submitting an informal proposal in document C.2/Informal Meeting/58/Rev.1, for the addition of a new paragraph to improve the text of article 21 by making it clear that coastal States had the right to adopt laws and regulations on passage through the territorial sea and concerning, *inter alia*, passage of warships, including the right to require prior authorization or notification for passage through the territorial sea. The sponsors of the proposal had contacted other delegations, but their proposal had not been sufficiently discussed and had not been accorded the opportunity given to other proposals, despite the vital importance of the subject with which it dealt. His delegation could not understand the positions of some delegations regarding that proposal. Some had not accorded the proposal due importance, while others had not presented a satisfactory argument against it. Strangest of all, many States which had opposed the proposal at open meetings were States whose legislation contained detailed provisions governing passage of warships through their territorial sea and required that ships should obtain prior authorization.

87. State practice showed that a norm existed in international law which required prior authorization by or notification to the coastal State for passage of foreign warships through its territorial sea. That norm was justified by the nature of a warship, which publicists regarded as a floating part of the foreign State, embodying its sovereignty and enjoying immunity. That was affirmed by article 32 of the draft convention and other provisions of its text.

88. In addition to the consideration of the sovereignty and national independence of coastal States, security considera-

tions, which were of great importance to any State, made it incumbent on the coastal State to regulate the passage of such warships through its territorial sea, in order to protect its people against possible dangers from the passage of such vessels and the sophisticated modern weapons which they might carry. Since many major Powers had introduced the use of nuclear energy for the operation of their warships or had armed them with nuclear weapons, it was possible to understand the concern felt by some States, which could be allayed only by an affirmation of the right of a coastal State to require prior authorization or notification for the passage of such ships through its territorial sea.

89. He wondered whether the text of article 23 of the draft convention, concerning innocent passage of foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances did not require amendment also, so as to lay down clearly the right of the coastal State to enact appropriate legislation to cope with the contingency of the passage of such ships and requiring, *inter alia*, prior authorization or notification. His concern, in making that proposal, was to ensure that a vital issue was taken into account, without unnecessary impediment of the movement of oil tankers and other vessels. The mere mention in article 23 of "international agreements" was not sufficient, particularly since some States refused to subject their warships to such agreements.

90. The proposals contained in documents A/CONF.62/L.88 and L.89, as currently worded, were being studied by Egypt, which would participate in their discussion with other delegations.

91. He paid a tribute to the Chairman and members of the Drafting Committee for their efforts to complete their arduous task.

92. With regard to article 309, on reservations and exceptions, and the note indicating that the article had been included on the assumption that the convention would be adopted by consensus and that that article should be regarded as a provisional clause pending the conclusion of discussions on outstanding issues, he felt that, in the event of the adoption of the draft convention without a consensus, article 309, should be amended to affirm the right of States to express reservations to the convention within the limits permitted by the Vienna Convention on the Law of Treaties of 1969,<sup>2</sup> since the Vienna convention did not expressly conflict with the provisions of the draft convention.

93. His delegation supported the proposal by the Group of 77, as expressed by the Chairman of the Group, for an addition to article 171 to further the interests of that Group.

94. He appealed to all delegations to continue their efforts in the same spirit which had prevailed from the start of the Conference and with the same sincere desire to arrive at a convention. The Conference bore a heavy historic responsibility. In the contemporary world, international relations were governed by the requirements of coexistence, interdependence and close interrelationships among States, whatever their interests, and the interest of mankind as a whole would, unquestionably, lead to the realization of the interests of each State and people.

95. Mr. DJALAL (Indonesia) said that his delegation continued to attach great importance to the conclusion of a comprehensive convention on the law of the sea by the end of the current session. The current text of the draft convention was the result of long years of negotiation and represented compromises that balanced all the conflicting interests of different States. As such it offered the best guarantee for the stability and orderly development of the world's oceans and there was no viable alternative for promoting law and order in ocean affairs.

96. The Drafting Committee faced an enormous task in finalizing its work before the end of the session and his delegation hoped that the Conference would conclude its negotiations well ahead of time so that the Drafting Committee was able to complete its work.

97. With regard to the report of the Third Committee, his delegation believed that the drafting changes proposed in document A/CONF.62/L.88 would not create problems for the Conference.

98. His delegation was grateful to the Chairman of the Second Committee for his attempt to achieve compromise solutions on various articles. He agreed that a general consensus seemed to have been achieved on the United Kingdom proposal regarding article 60, paragraph 3, and that the provision should be incorporated into the convention.

99. With regard to the report on participation contained in document A/CONF.62/L.86, his delegation felt that significant progress had been made on the issue and was particularly happy to note that an acceptable formulation seemed to have been found with regard to the issue of participation by self-governing associated States.

100. With regard to document A/CONF.62/C.1/L.30, substantial progress had been achieved with regard to the establishment of the Preparatory Commission. His delegation considered the draft resolution on that subject to be a compromise proposal and therefore broadly acceptable. The issue of preparatory investment protection had created considerable difficulties for the Conference. When it had first been raised, in 1980, his delegation had feared that it was an attempt to seek legal recognition of unilateral national legislation by the Conference and had therefore opposed it rather strongly. The Group of 77 had gone a long way since then towards accommodating the industrialized countries in order to facilitate their participation in the convention. By submitting its own proposal (TPIC/3) on preparatory investment protection, the Group had in fact admitted the need for such protection—in itself a tremendous concession to the industrialized countries—and its proposal attempted to regulate preparatory investment protection within the context of a convention to which all States would hopefully become parties.

101. His delegation would be prepared to discuss certain priorities for pioneer investors or operators, in obtaining approval of contracts for sea-bed mining. It would have great difficulties, however, if the scope of preparatory investment protection went beyond priority in obtaining contracts and would certainly not like to see it result in automatic approval of contracts, or in a licence to produce without regard to production policies or limitations or to operate outside the context of the convention.

102. The proposal in annex II to document A/CONF.62/C.1/L.30 represented some progress towards reconciling the preparatory investment protection proposals of the four industrialized countries and those of the Group of 77. His delegation endorsed the comments made earlier by the Chairman and other members of the Group of 77, but wished to emphasize that, in paragraph 6, the granting of an “exclusive right” to pioneer investors to carry out activities in the pioneer areas allocated to them seemed to be tantamount to legalizing unilateral legislation and the future “reciprocal State arrangement” or so-called “mini-treaty”. He suggested that the President should reconsider the nature of that paragraph.

103. The principle of “automaticity” provided for in paragraph 8 would also need to be reconsidered. While his delegation was prepared to consider the granting of certain priorities to pioneer investors in order to bring them within the scope of the convention, that priority should not result in an exclusive right to the pioneer area, followed by automatic approval of a contract, thereby legally if not practically pre-empting other potential applicants.

104. Paragraph 14 seemed to be intended to induce States to ratify the convention so that it might enter into force within five years of its adoption. If it did not enter into force within that period, all rights stipulated in the resolution would, according to the proposal, terminate. It was his understanding that in such a situation the 1970 moratorium resolution should continue to apply, at least in so far as it related to the production stage.

105. Paragraph 1 (e) suggested that the pioneer area should not exceed 150,000 square kilometres. That figure seemed to be rather large and to be taken from the proposal of the industrialized countries. More importantly, his delegation wished to know the relationship between the pioneer area, which was intended for exploration purposes, and the area intended for exploitation. In their preparatory investment protection proposal, the industrialized countries had admitted that the area for exploitation would be smaller than the pioneer area, although they left it to certifying States to determine the site of the exploitation area. His delegation hoped that the President would set a clear maximum limit on the size of the area for exploitation by a pioneer investor, otherwise the whole pioneer area might simply become an area of exploitation. In the past an exploitation area of 40,000 to 60,000 square kilometres per mining site had been mentioned.

106. Mr. TOULOU PAS (Greece) said that, as far as matters relating to the Area were concerned, any proposal to improve the draft convention should take into account the principle that all rights to sea-bed resources were vested in mankind as a whole. Only through a generally agreed convention could all nations hope to enjoy peace and stability on the world's oceans. His delegation strongly supported the efforts to find compromise solutions for Part XI of the draft convention and for the protection of preparatory investments.

107. His delegation shared the views expressed by the representative of Belgium on the question of participation.

108. As to issues dealt with by the First Committee, his delegation was particularly interested in the question of the representation of medium-sized industrial nations in the Council of Authority. It was one of the sponsors of the proposal that there should be two more seats on the Council, one more for the developing countries and one more for the category of members referred to in article 161, paragraph 1 (e).

109. The part of the draft convention dealt with by the Second Committee was the result of long and painful negotiations held in a spirit of compromise. The delicate balance achieved should in no way be upset. His delegation therefore agreed that none of the issues relating to Second Committee items should be reopened for consideration, with the exception of amendments which had obtained widespread support and were recognized as improvements to the text. While his delegation was not really happy with quite a number of provisions of the draft convention, it was prepared not to raise questions that might upset the balance of the package, if other delegations adopted a similar position.

110. His delegation disagreed with the position taken by the representative of Turkey, who had tried to raise questions concerning articles generally considered to be fundamental to the compromise achieved. At the tenth session, all interested parties had accepted the compromise solution of the current text concerning, *inter alia*, the delimitation of maritime zones. The articles on the régime of islands and on enclosed or semi-enclosed seas were of crucial importance and should not be touched. Provisions of such importance should not be deprived of their effectiveness either through amendments or through the formulation of reservations. In that area, his delegation was opposed to reservations.

111. The representative of Turkey had also referred to the possibility of the application of the convention, in some

regions, in an arbitrarily selective and discriminatory manner, and had asserted that Turkey was not bound by international customary or conventional rules. The Greek delegation rejected those views as unacceptable, unfounded and contrary to international law.

112. Mr. AL-ATASSI (Syrian Arab Republic) said that the Conference was facing some difficulties, which it must make every effort to overcome. His delegation had participated positively both in the Group of 77 and in informal contacts with a considerable number of delegations, because of the need to arrive at a satisfactory draft convention, a purpose which he felt some delegations, particularly that of the United States, had been trying to obstruct.

113. His delegation's position with regard to most of the outstanding issues was that of the Group of 77, particularly in so far as the Preparatory Commission and international investment were concerned.

114. Matters which his delegation regarded as of vital importance included article 21. As a signatory of document C.2/Informal Meeting/58, his country regarded the passage of warships through the territorial sea of States as an issue relating to sovereignty and territorial security and one which transcended the concepts of economic or political transactions. He stressed the need for adoption of the principle of authorization or notification for the passage of warships. That was of a special concern to small States.

115. With regard to participation in the convention, his delegation believed that national liberation movements should participate fully in the future convention on the law of the sea. The sound position required that the Conference should recognize liberation movements as full parties. There were legal bases for that, including the concept of the common heritage of mankind and the concept of membership of such movements in the United Nations and in many of its committees.

116. What was contained in the report of the President on the question of participation (A/CONF.62/L.86) was, in his delegation's view, insufficient. While his delegation did not reject compromise solutions, they should not be reached at the expense of cutting off liberation movements from full participation. He was still convinced that the Conference could arrive at a better formula regarding full participation, out of concern for the interests of the peoples represented by those movements.

117. Mr. WALKER (Barbados) said that the updating of the conventional laws of the sea was a challenge in itself. Yet the envisaged convention sought not only to update the conventional laws, but also to establish new rules and regulations relating to deep sea-bed mining. His delegation believed that if the convention was to be concluded by consensus, there was still a need for further compromise on the unresolved issues.

118. It was generally acknowledged that those issues related mainly to the question of deep sea-bed mining. For the most part, the opposing interests were those of the Group of 77 and those of the industrialized countries. It was the Group of 77 that, in the spirit of compromise, had made greater concessions. It could hardly concede more without engaging in a self-defeating exercise. His delegation therefore endorsed the views of the Chairman of the Group of 77 (158th meeting) concerning the draft resolution establishing the Preparatory Commission (A/CONF.62/C.1/L.30, annex I) and the draft resolution governing preparatory investments (*ibid.*, annex II). Barbados endorsed paragraph 13 of the first draft resolution and welcomed the inclusion of paragraph 11. It hoped that those provisions would be incorporated in the final document. As to the second draft resolution, his delegation supported the proposal in paragraph 8, which was necessary to ensure that there was no derogation from article 136 of the draft convention.

119. His delegation agreed with the Chairman of the Second Committee that the United Kingdom's proposal relating to an amendment to article 60, paragraph 3, met the conditions for consensus. It was satisfied that the implementation of the proposal would ensure the safety of navigation and the protection of the marine environment and would impose no constraints on fishing.

120. Barbados regarded the passage of warships through its territorial waters, without authorization or notification as a threat to its sovereignty. The proposal contained in document C.2/Informal Meeting/58/Rev.1 should be the subject of further negotiations with a view to a consensus.

121. Although the current formulation of the provisions relating to the delimitation of the exclusive economic zone and the continental shelf did not fully meet the requirements of his delegation, it was willing to accept articles 74 and 83, in keeping with the spirit of compromise which it considered essential for the successful conclusion of the convention. Those articles should be incorporated in the final document.

122. Mr. KITTIKHOUN (Lao People's Democratic Republic) said that although his delegation felt that some of its articles could have been improved, the current text of the draft convention reflected a balanced compromise worked out after difficult negotiations, and he therefore appealed to those who wished to amend it to accept it as it stood so as not to jeopardize that balance.

123. Turning to the question of participation, discussed in document A/CONF.62/L.86, he said that the national liberation movements recognized by the United Nations should be allowed to be full parties to the convention with the attendant right to benefit from the International Sea-Bed Authority so that they could protect the legitimate interests of the peoples they represented. The President's proposals in that document could provide a useful framework for future negotiations to provide a better formula for meeting their needs.

124. The statement made by the United States representative at the previous meeting offered nothing new and nothing that would facilitate the successful conclusion of the work of the Conference. The majority of delegations had expressed their contempt for the position reflected in document WG/21/Informal Paper/18, a position which had also been flatly rejected by the Group of 77. He therefore urgently appealed to the United States delegation to stop creating obstacles to the work of the current session by proposing changes prejudicial to Part XI of the convention.

125. Mr. KOROMA (Sierra Leone) said that the exploitation of the resources of the sea-bed should contribute to the economic development of all countries, particularly the developing ones, and that judged by that yardstick, many provisions of Part XI of the draft convention were inadequate. His delegation had hoped that further negotiations would align the convention more closely with the interests of the developing countries. Instead, the opposite had happened, so that it no longer satisfied even their minimum interests. The financial cost of the convention to his country was too high in terms of the benefits it conferred. Furthermore, the financial benefits to accrue to the Authority were too minimal to benefit the developing countries. His delegation also found unacceptable the veto provisions in article 161 and the provisions on the Review Conference as currently formulated.

126. The draft resolution on the establishment of the Preparatory Commission in annex I to document A/CONF.62/C.1/L.30, and the draft resolution governing preparatory investment in pioneer activities in annex II were constructive. With regard to the latter draft, his delegation recognized that consideration must be given to the results of research on sea-bed technology and maintained that such investments must be brought within the framework of the convention in order to avoid establishing a dual régime for the exploi-

tation of the resources of the sea-bed which would be prejudicial to the common heritage principle. His delegation was prepared to support the position that pioneer investors who had operated in accordance with the rules and regulations of the Preparatory Commission should be given priority when they applied for production authorization, but it could not agree that approval by the Authority should be mandatory. His delegation had not been provided with evidence or objective criteria to support the recommendation concerning the size of the area contained in the report, and therefore maintained that the Preparatory Commission should be left to determine its size.

127. He noted that the provision relating to preparatory investment had been restricted to polymetallic nodules. His delegation suggested that the draft resolution should govern resources as defined in article 133 of the draft convention and that should any resource other than polymetallic resources be discovered, the Preparatory Commission should be informed accordingly. Explanations had been offered regarding the intention of paragraph 10 (b) of the draft resolution, but that paragraph as it stood did not prevent the utilization of flags of convenience, nor was it realistic to expect that it would solve the problem that might arise.

128. Turning to the recommendations on participation in document A/CONF.62/L.86, he said that they did not meet his delegation's minimum requirements as far as national liberation movements were concerned. Those movements must sign the final act and the draft convention and become full parties to the convention—not for ideological reasons but so that they could protect the interests and natural resources of the peoples they represented. The recommendation to grant them observer status was a step in the right direction but it did not go far enough.

129. Turning to Second Committee matters, he noted that efforts had been made to renegotiate article 21 on the innocent passage of warships through the territorial sea of coastal States. Under international law, it was the duty of all States to safeguard their security and their national and territorial integrity and for that reason prior notification must be given to a coastal State before a foreign vessel could pass through its territorial sea.

130. His delegation supported the United Kingdom's proposal regarding article 60, paragraph 3, on installations or structures. It was both the right of States and the duty of those responsible for installing such installations or structures to remove them when they were abandoned or disused so as to ensure safety of navigation and facilitate fishing.

131. Mr. ENGO (United Republic of Cameroon) said that given the extreme complexity of the problems facing the Conference and the incredible diversity of the needs and national interests confronting it, it was not surprising that a few points remained on which some delegations wished to broaden the consensus. His delegation had no objection to that provided the informal consultations arranged for that purpose did not upset the delicate balance reflected in the draft convention. The different parts of the draft convention were closely interlinked. Some limited agreements relating to specific questions in each section of it had been reached through compromise and it was essential to abide by the spirit of those agreements when the final decisions were made. His delegation therefore believed that if for any reason the draft convention could not be adopted by acclamation, the Conference should first vote on the formal amendments and then vote on the draft convention as a whole rather than article by article.

132. Turning to certain important subjects dealt with in various parts of the convention, he said that his delegation took note of the difficult question of the delimitation of the continental shelf between States with opposite or adjacent coasts (art. 83) whose national frontiers had been established by

foreign colonial Powers. His own country was a geographically disadvantaged one whose coastline was very complicated, and its neighbours were other geographically disadvantaged or land-locked developing countries. His Government had always given priority to African solidarity and for that reason his delegation wished to stress the importance of negotiations and agreements between States with opposite or adjacent coasts, as set forth in article 83. That would be perfectly consistent with General Assembly resolution 2625 (XXV).

133. His delegation supported the rights conferred in article 69 on land-locked States. It also supported the right conferred in article 70 on States with special geographical characteristics, such as his own, so that they would be able to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region. His delegation hoped that when the terms and modalities of such participation were established, the spirit of impartiality underlying the draft convention as a whole would be taken into consideration, and it was in that light his delegation had accepted those articles.

134. The terms of article 121 on the régime of islands had presented some difficulties. Although his delegation had accepted the current definitions in a spirit of compromise, it considered that the delimitation of the continental shelf of an island should be based on the same criteria as those provided in article 83.

135. As for Part XI, his delegation welcomed the strengthening of the concept of the common heritage of mankind and of the indivisibility of the international Area and its resources. It was convinced that only an effective international régime and efficient international machinery could ensure that the benefits to be derived from the Area would ultimately revert to all mankind.

136. Turning to article 21 and the problem of innocent passage, he noted that security was a fundamental right of every State and that the long list of sponsors of the informal proposal in document C.2/Informal Meeting/58/Rev.1 showed that the problem had not been dealt with adequately. Part II, section 3, subsection C, of the draft convention indicated clearly that in accordance with the spirit of the convention, when a warship passed through the territorial sea it must comply with the laws and regulations of the coastal State. In the interests of consistency, article 21 should reflect the same principle. The coastal State could not ensure the application of subsection C unless it was notified. Objectivity and common sense required acceptance of the informal proposal to which he had referred, which was supported by a majority which could not be denied.

137. With regard to the question of participation in the convention by national liberation movements, he said his delegation shared the preoccupations of the Group of 77 on the subject, but believed that the proposals submitted by the President of the Conference in document A/CONF.62/L.86 provided a workable framework for reaching consensus. Those movements represented the genuine interests and aspirations of their peoples and their full participation in the convention was fully in accord with the principle of common heritage enshrined in that document.

138. His delegation welcomed the President's compromise proposals concerning the participation of international organizations in the convention, because they reflected the view of a majority of delegations that a member State of an international organization which was not a party to the convention could not derive benefits from it merely through membership in an international organization that had acceded to it.

139. With regard to the draft resolution on preparatory investment in annex II to document A/CONF.62/C.1/L.30, he said that his delegation would insist that any of the

suggested improvements did not detract from the basic objectives. Some accommodation must be found to protect investments currently being made by a limited number of companies and State enterprises. There should be no appearance of inviting an increase in the list of those already known because the result would be to make nonsense of the regulatory and institutional provisions in Part XI. There should also be no direct or indirect endorsement of selfish arrangements reported to be contemplated by certain industrial States to carry out activities in the Area outside the convention. There must be a direct link between interim protection and the provisions of the draft convention. Within such parameters there was still scope for encouraging genuine pioneer investors to launch activities consistent with the concept of the common heritage of mankind. His delegation welcomed the textual realization of the imperatives for a viable Enterprise in the parallel system.

140. His delegation also welcomed the statements by the five industrialized States regarding the negotiability of the proposals of the Group of 77 but did not understand the insistence by some of them that those proposals could not be considered on their own merit in a negotiating process. Proposals to continue an unproductive dialogue on non-negotiable subjects were frustrating.

141. Lastly, he reminded all interest groups, especially the industrialized countries, that the purpose of the Conference was not to protect the benefits of a few to the detriment of the many in the management of resources constituting the common heritage of mankind.

*The meeting rose at 6.40 p.m.*

## 166th meeting

Thursday, 1 April 1982, at 8.10 p.m.

*President: Mr. F. ZEGERS (Chile)*

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

1. Mr. ELFAKI (Sudan), commending the President on his strict adherence to the schedule, observed that the Conference was about to enter the important and critical stage of ensuring that provisions worked out over an entire decade would be applied and implemented on an objective and equitable basis in the general interest. It must be remembered that the draft convention was based on an accommodation rather than a conflict of the main interests at stake. Far from meeting all expectations, it merely provided a middle road. A genuine commitment to the basic principles and compromise formulas on which it was founded was therefore a prerequisite for the successful conclusion of the Conference.

2. On previous occasions, particularly during the informal meetings held by the Second Committee, his delegation had drawn attention to the importance of dealing with the innocent passage of foreign warships through territorial seas. Widespread concern over that fundamental matter had motivated the informal proposal submitted in document C.2/Informal Meeting/58/Rev.1 in response to the need for coastal States to enjoy full national sovereignty over their territorial seas and to ensure their peace and security, particularly in the case of coastal States with limited resources, by calling for prior notification and authorization of the passage of foreign warships through territorial seas.

3. Given the importance of adopting a unified and coordinated draft convention, care should be taken to avoid any confusion or misunderstanding as to the terminology used. For example, article 70 referred to "States with special geographical characteristics", while article 161 referred to "geographically disadvantaged States". It was in fact the latter expression which had been agreed on in the United Nations system and should therefore be used consistently throughout the convention.

4. His delegation fully supported the views expressed on the outstanding issues by the Chairman of the Group of 77, who represented the voice of moderation. In particular, those liberation movements which had participated in the Conference and were recognized by the United Nations and by regional organizations with the status of full membership on

the same footing as States were entitled to full participation in the results of the Conference, both in the convention and in all the institutions established, since they represented peoples who had the right to benefit fully from all the instruments and bodies governing the wealth and resources of the sea.

5. His delegation also endorsed the proposals put forward in document A/CONF.62/C.1/L.30 regarding the Preparatory Commission, the International Tribunal for the Law of the Sea and the preparatory investments in pioneer activities, which provided a good basis for a broad consensus between the Group of 77 and the industrialized countries. Sudan, having always been in sympathy with developing countries that were land-based producers of minerals extracted from the sea-bed, was satisfied that the draft resolution on the Preparatory Commission in annex I to that document, particularly operative paragraph 5 (j) relating to the undertaking of studies on problems encountered by land-based producers and the establishment of a compensation fund, fully reflected the concern of the Conference to take their economic difficulties into account.

6. It also welcomed the amendment proposed by the Group of 77 (A/CONF.62/L.116) to add a new paragraph to article 171 authorizing the Economic Planning Commission to institute a payment system for the compensation fund.

7. The final point which his delegation wished to stress was the fundamental importance in the ultimate stages of the Conference of understanding its true nature and complexity rather than considering it as a mere exercise to regulate the extraction of minerals. Full appreciation of the true context of the Conference was vital to its success.

8. Mr. THILAGADURAI (Malaysia) welcomed the concrete proposals in document A/CONF.62/C.1/L.30 relating to the Preparatory Commission and preparatory investments, as well as the proposals contained in the President's report (A/CONF.62/L.86) on participation, which provided a very useful framework for negotiations. However, his delegation felt that liberation movements recognized by the United Nations should participate fully in the convention.

9. His delegation concurred in the views expressed by the Chairman of the Second Committee (A/CONF.62/L.87) to the effect that the provisions of the draft convention concerning issues falling within the purview of that Committee