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168th meeting

Thursday, 15 April 1982, at 10.40 a.m.

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

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

STATEMENTS ON AMENDMENTS

1. The PRESIDENT said that the Conference had decided to apply rule 33 of the rules of procedure, with effect from 8 April 1982. Pursuant to the decision in document A/CONF.62/116,[1] the Secretariat had received 30 amendments (A/CONF.62/L.96 to L.126) to the draft convention (A/CONF.62/L.78).[1] In accordance with rule 37 of the rules of procedure, he had decided to defer the taking of a vote on the amendments for eight calendar days. In the meantime, delegations would have an opportunity to make statements on the amendments. Also during that period, the President, assisted by the General Committee, would be making every effort conducive to the attainment of general agreement in accordance with the programme of work (A/CONF.62/116).

2. The Collegium had met on 14 April and had looked carefully at all the amendments. He had requested his colleagues in the Collegium to assist him in undertaking consultations on the amendments where appropriate. In those consultations, they would be guided by the objective of making every effort conducive to the attainment of general agreement. They would also be guided by the criteria set forth in document A/CONF.62/62.[2]

3. There had been widespread and substantial support for the amendments proposed by Iraq (A/CONF.62/L.101) and Belgium (A/CONF.62/L.119). The first two of the amendments proposed on behalf of the Group of 77 (A/CONF.62/L.116) had also received widespread support, appeared to satisfy the aforesaid criteria and would move the conference closer towards consensus.

4. Mr. RATINER (United States of America), introducing the amendments contained in document A/CONF.62/L.121 on behalf of the sponsors, said that, earlier in the session, his delegation had submitted informally what had become known as the "green book" of amendments (WG.21/Informal Paper/18). The United States had since withdrawn those amendments, which had been superseded by those being introduced.

5. The sponsors had given careful consideration to all the proposals circulated since the start of the session. The extent possible and as far as was consistent with the need to protect vital national interests, they had tried to work on the basis of those proposals, with a view to improving the prospects for consensus: in formulating their amendments, the sponsors had drawn substantially on them in an effort to remedy the deficiencies identified in Part XI of the draft convention.

6. The sponsors took the view that the question of production policies was central to the system proposed in Part XI. In the main, the difficulties they had with Part XI were not insurmountable, but the difficulties regarding production policies and production ceilings sometimes hampered the search for solutions to other problems. For its part, however, the United States, in an effort to promote general agreement, had recently announced that it would not insist on the elimination of the concept of production ceilings.

7. In the opinion of the sponsors, the question of production policies, as dealt with in the draft convention, tended to give an anti-development orientation to Part XI. In proposing article 150 (*bis*), they were seeking to ensure that the powers and functions of the Authority would serve to foster the development of the resources of the Area.

8. As to article 151, the proposed amendment to paragraph 2 (*b*) (ii) would have a relatively minor effect on the production ceiling. In the haste to meet the deadline for the submission of amendments, some confusion had arisen concerning that proposed amendment, which was the only one in document A/CONF.62/L.121 that was not fully supported by all the sponsors.

9. The sponsors had proposed the addition of a paragraph to article 151 because they believed that the provisions should allow a slight and temporary excess of production over the ceiling. It was impossible to predict whether there would indeed be such an excess when draft resolution II concerning preparatory investment in pioneer activities (A/CONF.62/L.94) was actually implemented. Operators might well phase their activities in such a way as to keep production under the ceiling. It was important, however, to encourage sizeable investments, protect pioneer investors and give them a reasonable assurance that commercial production would eventually be possible. It was essential to prevent situations in which pioneer investors expended large amounts only to find that they were denied the opportunity to recoup and make a reasonable profit. The sponsors therefore attached the utmost importance to the new paragraph 5.

10. With respect to article 153, some delegations might take the view that the provisions in the proposed new paragraph 4 (*b*) would diminish the Authority's control over activities in the Area. That was not the intention. The sponsors were seeking a more efficient system of enforcement, with the final powers of inspection and supervision resting with the Authority. They believed that it would be more efficient, and perhaps more economical, for the Authority to rely on the States sponsoring the operators for the enforcement of its rules, regulations and procedures. At the same time, the Authority would closely monitor enforcement so as to ensure full compliance with the terms of the convention and with the rules, regulations and procedures.

11. As far as the amendments to article 155 were concerned, although the sponsors had drawn substantially on the informal proposals submitted by the group of 11 (WG.21/Informal Paper/21), they considered those proposals inadequate in one respect. They were of the opinion that many delegations shared their concerns regarding the article as it appeared in the draft convention. Accordingly, under the new paragraphs 3 and 4, amendments to the convention adopted by the Review Conference and submitted to States for ratification or accession would not enter into force unless they had been ratified by all States parties. The Third United Nations Conference on the Law of the Sea had been negotiating the basic framework of the convention for a number of years with a view to reaching consensus. The sponsors failed to understand why two thirds of the States parties should have the power to amend the convention and then to maintain a system which might be changed without the consent of those

[1] 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).

[2] *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

whose consent had been sought with such diligence and patience for so many years.

12. Article 158 dealt with a rather sensitive issue. The sponsors had tried very hard to avoid questions relating to the separation of powers of the Assembly and the Council. They were prepared to accept the proposal made by the group of 11 (WG.21/Informal Paper/21/Add.1), with one minor amendment to article 160, paragraph 2; that amendment would dispel the concern that the Assembly might develop new powers and functions not envisaged when the convention had been drafted. The sponsors attached great importance to the addition to paragraph 2 (*g*). If the Assembly did not approve the proposed annual budget of the Authority, it would be better to have the Council reconsider the budget than to have the Assembly attempt to revise it.

13. A number of countries were being called upon to make a major contribution towards the functioning of the new system. It was only fitting that they should be guaranteed seats on the executive body of the Authority. The proposed new paragraph 1 (*a*) of article 161 was necessary to ensure equality of treatment for all groups of members of the Council. The purpose of the amendment to paragraph 1 (*b*) was to ensure adequate representation for the highly industrialized countries.

14. With regard to article 161, paragraph 1 (c *bis*), the sponsors believed that the conditions for the adoption of Council decisions on certain questions of substance should be different from those laid down in the draft convention. The voting system proposed by the sponsors would promote negotiations with a view to consensus. Although consensus would not be an absolute prerequisite, special-interest groups and regional groups would have the power to block decisions on certain questions of substance. The sponsors' intention was not to gain a unilateral advantage, but to foster efforts to ensure that decisions enjoyed the broadest possible support. It would be just as easy for land-based producers as for industrialized countries to block the decisions in question. It was quite possible that the sponsors would welcome the adoption of many of those decisions. Their willingness to have a procedure whereby such decisions could be blocked by others was a tangible sign of their good faith and of their desire to ensure that, as far as possible, the decision-making process was based on negotiation.

15. The sponsors were not wedded to that particular approach. There were other possible solutions to the problems posed by the voting procedures laid down in the draft convention. The highly industrialized countries could derive little comfort from those procedures. On many questions of substance, they could have potentially competing interests and would be unlikely to vote as a bloc. Their perception of the situation led them to believe that the 10 votes required for a decision, under those procedures, would not always be easily available. The question of voting procedures therefore deserved serious consideration.

16. For the most part, the proposed amendments to article 162 were intended to ensure that the Council had the appropriate powers to deal with matters referred to elsewhere in document A/CONF.62/L.121.

17. In proposing amendments to articles 163 and 165, the sponsors were seeking to improve on the proposals made by the group of 11. As, under those proposals, applications for production authorizations could be rejected if the applicants failed to meet the necessary conditions, the composition of the Legal and Technical Commission should fairly reflect that of the Council, and each category of the Council specified in article 161, paragraph 1, should elect three members of the Commission. The sponsors took the view that all the Commission's work was of a technical nature, even when it involved the drafting of the rules, regulations and procedures of the Authority. Depoliticizing the Commission would be in the interests of all States and would ensure that the Commission had the appropriate technical expertise. To the extent that legal assistance and advice were necessary in the actual drafting of the rules, regulations and procedures of the Authority, the legal staff of the Secretary-General should provide appropriate assistance. However, the Commission's basic functions should be carried out by technical experts.

18. The proposed amendments to articles 178, 188 and 189 were self-explanatory and were probably not very controversial.

19. As to the amendments to annex III, the sponsors had borrowed substantially from the proposals made by the group of 11. They were particularly concerned with the issues referred to in articles 7, 8 and 9. Under the new paragraph 1 of article 7, it would be possible to award production authorizations to applicants which believed that they could begin commercial production within a stated period. That would obviate the need for discretionary powers or for competition, while improving the efficiency of the system. That procedure would also be much more in line with economic realities. The purpose was to ensure that an applicant which undertook the necessary exploratory work and saw its way clear to commencing commercial production would be granted the authorization, subject to the requirement concerning the production ceiling. Although the amendment was not really technical, it was important and would go a long way towards easing the sponsors' difficulties concerning the production policies provided for in Part XI of the draft convention.

20. Article 9 had been criticized on the grounds that the Enterprise could hoard mining sites, perhaps as a means of retaining control of valuable real estate until its value increased. He believed it reasonable to ask the Enterprise to entertain some kind of limit on the extent of the areas it kept out of production. The sponsors' proposal was, therefore, that if, after 10 years, an area was not in production, efforts should be made to involve developing countries in bringing it into production; and if after 12 months no suitable plan of work had been submitted, the area concerned should be opened to other parties. The sponsors envisaged the use of a competitive system in awarding contracts for the exploitation of such areas.

21. The amendments to the Statute of the Enterprise proposed by the sponsors were modest, but likely to increase the chances of support from industrialized countries. Essentially, they were designed to give the Enterprise's creditors an opportunity to have some say in the use of their assets. If moreover the Enterprise faced economic difficulties, its creditors should know that means of recovering their assets existed. There was nothing unusual in such provisions in any legal system.

22. The proposals regarding the establishment of the Preparatory Commission (A/CONF.62/L.94, draft resolution I) were most important. They related particularly to the method of adopting rules, regulations and procedures for the conduct of activities in the Area. Some members had previously argued that the Council itself should adopt such rules, regulations and procedures through a simple system—meaning one which it would be easy for a few countries to control—but that proposal had been withdrawn. Instead, the sponsors were asking for arrangements in the Preparatory Commission to ensure that, if rules, regulations and procedures were not adopted within a reasonable period of time, certifying States could have a substantial voice in their adoption. The point was important because article 137, paragraph 2, of the draft convention could effectively impose a moratorium on the development of resources in the Area until rules, regulations and procedures for their exploitation were established. The proposed amendment to article 5 (*g*) of draft resolution I was also designed with the implications of article 137, paragraph 2 in mind. If the Commission adopted rules and regulations on

all resources they would necessarily be very general ones, since little was known about resources other than polymetallic nodules. In view of the difficulties posed by article 137, paragraph 2, the sponsors believed that that would be the most harmonious way of resolving an otherwise extremely difficult political problem, and one which would become particularly apparent when the question of ratification was considered by Governments.

23. It would be advisable not to discuss the amendments proposed in document A/CONF.62/L.122 concerning draft resolution II on the preparatory investment in pioneer activities, since the matter had been the subject of much constructive discussion during the Conference. The problem was simply whether pioneer investors would be tempted to invest in polymetallic nodule mining if they felt they might not, later, be able to engage in commercial production when they felt the market was ready. The issue could therefore vitally affect the chances of adopting an instrument by 30 April.

24. Speaking, finally, on behalf of his own delegation only, he admitted that his Government had spent a long and difficult time reviewing the draft convention and had taken difficult decisions regarding its continuing participation in the Conference. It must be clear to all delegations that his country, up to its highest levels, was ready, willing, able and anxious to take part in a consensus on a convention by 30 April. It had done everything possible, consistent with its vital interests, to reduce its negotiating demands to a minimum. It was in the interests of the United States not to remain outside the convention, but it was also in the interests of all countries to produce an instrument which would command the widest possible support.

25. Mr. EVENSEN (Norway), speaking on behalf of the group of 11 developed countries sponsoring the amendments proposed in document A/CONF.62/L.104, said that the extensive changes to Part XI of the draft convention proposed by the United States, and the subsequent reluctance by the Group of 77 to consider the United States proposals as a basis for negotiation, had created a serious impasse which the Conference had not yet overcome. The group appreciated the efforts by the United States delegation to reduce its list of proposed changes, but remained concerned that the extensive package of amendments introduced by the United States representative (A/CONF.62/L.121) might not be conducive to overcoming the difficulties which the Conference was facing.

26. The group of 11 had prepared its proposals with the purpose of making progress within the consensus on Part XI reached at the end of the ninth session, and felt that its package did not alter the fundamental balance of the draft convention. It was not seeking to protect any special interests of its own, but to provide a framework within which the Conference might find generally acceptable solutions to the principal concerns of the United States and others.

27. The group proposed the insertion in article 150, on policies relating to activities in the Area, of a new subparagraph (*a*) confirming that activities in the Area should promote the development of its resources. A minor drafting change was proposed to the former subparagraph (*a*); the remaining subparagraphs in article 150 would merely be relettered.

28. The current text of article 155, on the Review Conference, was an integral part of the compromise on the adoption of the parallel system and the balance of the whole package deal. It was, however, apparent that the article in its current form was a serious obstacle to universal acceptance of the draft convention. The group, by way of compromise, proposed the deletion of the provision that amendments could be adopted and then become binding on States parties without their consent. Instead, it proposed the same decision-making procedure as was applicable to the Conference itself: the same procedure also applied to amendment conferences under article 312, to which no objection seemed to have been raised. The group's proposal would enable States parties to avoid being bound by amendments they had not ratified, without having to denounce the convention. The proposed amendment to article 155, paragraph 4 (*a*) stated expressly what would be inherent in the negotiating situation at the Review Conference: that account should be taken of the effectiveness of the parallel system.

29. The proposed amendments to article 158, paragraph 4, and article 160, paragraph 1, were essentially drafting improvements.

30. The first amendment the group proposed to article 161, on the composition of the Council, had been made to meet the concern of the United States to have a guaranteed seat on the Council. The insertion after subparagraph 1 (*e*) reflected a generally accepted understanding of the distribution of seats on the Council, and should meet any concerns the United States delegation might have about the balance of representation. In that connection, he drew attention to the proposed note applying to article 161, which read: "For the purpose of this paragraph, the group of Western European and other States shall include, *inter alia*, Japan and the United States of America".

31. The third amendment proposed to article 161 (subpara. (*c*) (bis)) would require the submission of the budget by the Council to the Assembly to be made by a majority of three fourths plus one.

32. The group had proposed an amendment to article 1 of annex III, on title to minerals, to clarify that title. According to article 137, paragraph 2, and article 157, paragraph 1 of the draft convention, the Authority exercised the sovereign rights to resources on behalf of mankind. The purpose of annex III, article 1, was to stipulate when the title to the minerals passed to others. Legal clarity on that point was essential. The group had introduced a definition of the term "operator" in article 3, paragraph 1; the amendment to article 1 would make it clear that the Enterprise also had the right to dispose of the minerals, to refine them or make other commercial uses of them without further authorization from the Authority. "Operator" was introduced as a general term comprising all sea-bed miners as distinct from contractors. Contractors comprised sea-bed miners other than the Enterprise, namely all those for whom an approved plan of work took the form of a contract signed by the Authority. Consequential changes would have to be made in other articles of annex III.

33. As amended, article 3, paragraph 4 (*b*), would contain an enumeration, taken from article 4, paragraph 6, of annex III of the undertakings required of an applicant for approval of a plan of work: the intention was to improve the structure of the provisions concerning the approval of plans of work.

34. The group's proposed amendments involving articles 4, 4 (*bis*) and 6 had been made to simplify and clarify the procedures for approval of plans of work without disrupting the balance of the current draft. Article 4, paragraph 1 (*a*), as proposed, was an elaboration of the provisions of article 4, paragraph 4, of the existing text, while the new paragraph 1 (*b*) drew on the provisions of article 4, paragraph 5, of the draft convention. Article 4 (*bis*), on certification of applicants, would introduce certification from sponsoring States in order to facilitate the approval of plans of work.

35. Under article 6, paragraph 2, as proposed by the group, the qualification requirements of an applicant would be presumed to have been met when certification had been made by a sponsoring State. The group expressly provided that the Legal and Technical Commission should consider applications in the first instance, with recourse to voting if need be. In paragraph 3 of the same article, the group proposed that the Commission should recommend the approval of a plan of work submitted to it by the Enterprise, States parties and

applicants certified by a sponsoring State unless, by a three-fourths majority, it decided that the requirements established by the convention or the Authority's rules, regulations and procedures had not been complied with.

36. Article 5, on the transfer of technology, was crucial for obtaining a universal convention adopted by consensus. The amendments suggested by the group attempted to reconcile the task of making the Enterprise a viable commercial entity with the obstacles involved in compelling sea-bed miners to accept the principle and consequences of a mandatory transfer of technology to the Enterprise. The group had used the provisions of article 144, paragraph 2, of the draft convention, which called for the Authority and States parties to "co-operate" in promoting the transfer of technology and scientific knowledge, as its starting point. It proposed reducing the burden of the mandatory transfer of technology required under annex III, article 5, of the current text, instead of imposing on the contractor the obligation to co-operate with the Authority in securing the necessary technology for the Enterprise, and to assist the Enterprise in obtaining such technology on the free market. Under paragraph 3 (*b*), however, mandatory transfer of technology would still be required when the owner of technology placed it on the open market: it would be unreasonable to allow the owner to discriminate against the Enterprise. Under paragraph 3 (*c*) of the group's proposal, the Contractor would still in principle be under an obligation to secure technology for the Enterprise, but only if it was possible to do so without substantial cost. The contractor would also retain considerable discretion in deciding whether such an obligation existed in the specific circumstances.

37. With the change in approach to the transfer of technology in article 5, the group felt that the 10-year time limit provided for in paragraph 7 was unnecessary. The group proposed a new paragraph 5, however, making it an obligation for States parties both to ensure that the Enterprise became a viable commercial entity and to prevent concerted refusal by persons under their jurisdiction to supply technology to the Enterprise.

38. Finally, the amendment proposed to article 17, on rules, regulations and procedures, would fill the existing lacuna in the draft convention relating to resources other than polymetallic nodules.

39. Mr. TOULOUPAS (Greece) announced that his delegation was withdrawing all but the first amendment it had proposed in document A/CONF.62/L.123. With these amendments the Greek delegation wished to put on record some of the main points of concern for Greece. Nevertheless, for the purpose of facilitating consensus, for which also in the past Greece made many concessions, his delegation decided to withdraw all but one of its amendments. The remaining amendment related to article 19, paragraph 2 (*l*), of the draft convention. Article 19, paragraph 2, introduced some exceptions to the fundamental concept of innocent passage, in accordance with which the passage of a foreign ship would be considered prejudicial to the peace, good order or security of a coastal State if that ship engaged, in the territorial sea of that State, in certain listed activities. The last sentence of that paragraph referred to "any other activity", giving the impression that any other activity not having a direct bearing on passage was prejudicial to the peace, good order or security of the coastal State. To avoid such an interpretation, which in his delegation's view went far beyond the intentions of the representatives who had accepted the original formulation, he proposed replacing the word "other" by "similar".

40. The exclusion of reservations on the convention was a very important factor in the balance achieved on the package deal. If that principle was abandoned, reservations would clearly lead to a compartmentalization of the whole convention, which would obviously upset the delicate balance achieved so painfully and with so many compromises. His delegation therefore strongly opposed any changes to article 309 or 310.

41. His delegation supported the amendment put forward in document A/CONF.62/L.100, of which it had become a co-sponsor, and the amendments proposed by the United Kingdom (A/CONF.62/L.126) concerning articles 76 and 121 and by Spain (A/CONF.62/L.109) concerning article 39, paragraph 3 (*a*). On the other hand, it opposed the amendments in documents A/CONF.62/L.108, L.111, and L.120 concerning articles 309 and 310, in document A/CONF.62/L.110 concerning article 123, and in document A/CONF.62/L.118 concerning article 121.

42. Mr. TIWARI (Singapore) said that he would not have spoken had it not been for the nature of some of the amendments proposed. His remarks were in any case not intended to prejudice the statements to be made later by the Chairman of the Group of 77.

43. The continental shelf question had long remained unresolved before the broad-margin States and a few others had come up with the formula currently presented in article 76 of the draft convention. Under that formula, the broad-margin States retained practically every inch of their continental shelf, which in some cases extended hundreds of miles, and every inch containing any trace of resources. Nevertheless, one State was now trying to make the formula meaningless by proposing, in document A/CONF.62/L.126, to replace the words "on the basis of" in article 76, paragraph 8, by "taking into account". The purpose was evidently two-fold: to enable broad-margin States to establish the limits of their continental shelves wherever they liked; and to destroy the purpose of the Commission on the Limits of the Continental Shelf, since the broad-margin States would not be bound by its recommendations. The provisions relating to that Commission were already tailored so that it would probably be dominated by members from broad-margin States, yet some delegations wished to have double insurance. He wondered about their sense of fair play.

44. The provisions to which the amendments proposed in documents A/CONF.62/L.109 and L.123 related were the result of painstaking negotiations, which had been settled in a complicated package deal involving many other provisions of the draft convention. Any attempt at modifying them posed the danger of undoing the package. Many delegations, including his own, had difficulty with those and other provisions of the draft convention, but had gone along with those parts in the interest of legal order and peace on the oceans.

45. He thanked the Greek delegation for agreeing to withdraw the second to fifth paragraphs proposed in document A/CONF.62/L.123 and called on the United Kingdom and Spanish delegations to show similar statesmanship in the case of documents A/CONF.62/L.109 and L.126.

46. His delegation was also sympathetic to several other amendments proposed, particularly that contained in document A/CONF.62/L.115. Singapore would not benefit in the slightest from that proposal, but favoured it since it would mitigate some of the inequalities developing countries suffered under other parts of the draft convention.

47. Mr. ARIAS SCHREIBER (Peru) said that, leaving aside the amendments proposed to Part XI of the draft convention and to the Area, on which the Chairman of the Group of 77 would be commenting, the proposed amendments fell into three categories. First, there were those reflecting ideas supported by a large number of delegations, which merited further consideration that could lead to a generally acceptable agreement, namely, the amendments to article 63 sponsored by Australia and other delegations (A/CONF.62/L.114); those sponsored by Algeria and other delegations relating to article 21 (A/CONF.62/L.117); and the amendment to annex

IX sponsored by Belgium (A/CONF.62/L.119). Secondly, there were draft amendments containing new proposals or reflecting ideas which had considerable support, namely, the draft amendments sponsored by Iraq (A/CONF.62/L.101 and L.110), Namibia (A/CONF.62/L.102), France (A/CONF.62/L.106), Venezuela (A/CONF.62/L.108), Spain (A/CONF.62/L.109), Romania (A/CONF.62/L.111 and L.118), and the one remaining amendment sponsored by Greece (A/CONF.62/L.123) in its constructive effort to keep the proposed changes to a minimum. Thirdly, there were draft amendments which reintroduced ideas already rejected either explicitly or tacitly by the majority of delegations, namely, those sponsored by Romania (A/CONF.62/L.96), Lesotho (A/CONF.62/L.99 and L.115), Zaire (A/CONF.62/L.107), Romania and Yugoslavia (A/CONF.62/L.112), Turkey (A/CONF.62/L.120) and the United Kingdom (A/CONF.62/L.126).

48. His delegation was strongly opposed to any amendments affecting the substance of articles 56, 62, 69, 70 and 71, or to any other proposals seeking to add provisions to those articles, since all the articles relating to the exclusive economic zone had been the subject of broad and difficult negotiations and any change would destroy the delicate balance of Part V.

49. Peru was sympathetic to the establishment of a Common Heritage Fund for the benefit particularly of the least developed and land-locked countries, but it had on several occasions explained the legal and economic reasons for which it could not accept a proposal, such as that made by Lesotho (A/CONF.62/L.115), to establish such a Fund from the proceeds accruing to coastal States from the exploitation of the non-living resources of their exclusive economic zones. His delegation had suggested instead that the proceeds should accrue from the exploitation of resources in the continental shelf beyond the 200-mile limit or—subject to agreement among the parties concerned—in the Area, but since its suggestion had not been accepted, it was compelled to oppose the amendment proposed by Lesotho.

50. He urged all delegations which had introduced amendments that fell into the third category to withdraw them in time so as to avoid useless discussions and their sure rejection in the event of a vote. His own delegation had refrained from submitting draft amendments despite the well-known fact that many provisions of the draft convention were unsatisfactory to it. He did hope, however, that informal consultations would lead to a consensus on certain drafting problems which it was calling to the attention of the Second Committee.

51. He drew the attention of the Drafting Committee to the fact that the Spanish text of article 118 referred to "areas of the high seas" and the French text to "high seas". The last term was the correct one since the high seas were one single space clearly defined by the draft convention.

52. Mr. ZEGERS (Chile) said that all the amendments proposed to the sea-bed régime were presumably intended to further the consensus sought by the President and the Chairman of the First Committee together with the Group of 77 which, of course, favoured the current text of the draft convention. In that connection, the role played by the Group of 11 had been outstanding.

53. Regarding the amendments to what might be called the "classical" law of the sea, i.e. the parts of the draft convention dealt with by the Second and Third Committees and the question of the settlement of disputes, the Conference had proceeded on the principle that there would be no amendments to the consensus text of the draft convention, and his delegation would vote accordingly. In the 14 years since the Sea-Bed Committee had met, the Conference had worked on a basis of consensus and it was the right and duty of the President and the Committee Chairmen to make every effort conducive to general agreement in accordance with the rules of procedure and the agreements reached over the years. The programme of work for the fourth stage of the Conference (A/CONF.62/116) called for efforts conducive to general agreement until the very last moment; similarly, rule 37 (*c*) of the rules of procedure obligated the President to exhaust all efforts to that end: both implied that the President had the authority to propose agreed texts constituting formal amendments to the draft convention which, under rule 44 of the rules of procedure, would have priority. By the same token, the members of the Conference must co-operate in every possible way to ensure that the convention was adopted by universal agreement.

54. Regarding article 309, on reservations and exception, any amendments introducing reservations would destroy the letter and spirit of the draft convention. General Assembly resolution 3067 (XXVIII), convening the Conference, clearly defined the political and legal scope of the question and the unity of the law of the sea. The Conference had not followed the more usual procedure of adoption by majority vote; it had been preparing a single convention admitting of no exception.

55. That draft convention had a legal unity: the sea-bed régime, for instance, was related to the articles on the continental shelf, the régime for scientific research to that of the exclusive economic zone, and so on throughout. The draft convention also had a political unity: it formed a package presupposing a balance of its various parts, and reservations on even one part would destroy the unity. Hence the wisdom of article 309 in excluding reservations. The note currently appended to article 309 regarding its provisional character would eventually be dropped from the text.

56. The articles on delimitation were part of the package. It was important for the draft convention to delimit maritime spaces, to specify where sovereignty and sovereign rights could be exercised, as in the provisions on the outer limits of the territorial sea, the exclusive economic zone and the continental shelf. It must also establish rules on delimitation between neighbouring States. Those were not bilateral problems but concerned all States and the law of the sea in general. Delimitation was also important for the peaceful settlement of disputes in accordance with international law, a prime objective of the draft convention.

57. Mr. POWELL-JONES (United Kingdom) introduced the two amendments put forward by his delegation (A/CONF.62/L.126). The United Kingdom was proposing to replace, in article 76, paragraph 8, of the draft convention, the words "on the basis of" by the words "taking into account". This would restore the original wording of the text as it had appeared in the informal composite negotiating text/Revision 1;[3] in his delegation's view there had not been sufficient support for the change made to that text at the ninth session. The United Kingdom was also proposing that article 121, paragraph 3, should be deleted, since there was no reason to discriminate between different forms of territory for the purposes of maritime zones. There was no basis for such discrimination in international law and it would conflict with the rights of States in respect of their territories. For the same reasons the United Kingdom would oppose the addition of a new paragraph to article 121, as proposed by Romania (A/CONF.62/L.118).

58. With regard to the draft amendments which the representative of the United States had just introduced (A/CONF.62/L.121) and a number of which had been co-sponsored by his delegation, he wished to make some additional points. On production policies the United Kingdom had put forward some short but important amendments to correct the balance of the treatment of sea-bed production, and, in article 151, it was proposing an addition to the production-limitation provisions, intended to reinforce the

[3] A/CONF.62/WP.10/Rev.1.

"phasing in" characteristic of the formula by allowing a small gradual increase in the production permitted to sea-bed producers, but only after the initial stage of production. It was confining itself to that modest proposal in an effort to reach a compromise, rather than pursuing the more radical approach it had originally favoured. It did not share the interpretation of article 151, paragraph 2 (*f*), put forward in document A/CONF.62/L.107.

59. The other draft amendments proposed to Part XI by the group of "Friends of the Conference" (A/CONF.62/L.104) had merit, and the co-sponsors of the draft amendments in document A/CONF.62/L.121 had built on them where they could, particularly with regard to transfer technology, the Review Conference and the approval of contracts.

60. Of the draft amendments proposed by other delegations, the amendment to article 150 in document A/CONF.62/L.98 was really a matter for a different kind of convention. The proposals for increasing the size of the Council (A/CONF.62/L.100, L.103 and L.113) would alter the balance of different interests in the Council which was widely accepted as appropriate. The suggested amendments to articles 164 and 165 (A/CONF.62/L.97) were not consistent with the United Kingdom's own proposals in relation to those articles. Nor could it support proposals for elaborating the anti-monopoly or anti-density provision of annex III, articles 6 and 7.

61. His delegation had also co-sponsored a number of amendments to draft resolution II contained in document A/CONF.62/L.94, on the treatment of preparatory investments, which meant that the differing proposals in documents A/CONF.62/L.97, L.105 and L.116 were unacceptable to it.

62. Two amendments had been proposed to article 21: one by Gabon (A/CONF.62/L.97), which was identical to the informal proposal in document C.2/Informal Meeting/58/Rev.1, and his delegation remained opposed to it. The proposal by Algeria and some other countries (A/CONF.62/L.117) to insert the word "security" in article 21, paragraph 1 (*h*), was no more acceptable since it would give ill-defined and unwarranted powers to coastal States over merchant ships as well as warships and would be a source of friction between coastal States and the maritime countries.

63. The United Kingdom could support the first amendment proposed by Greece (A/CONF.62/L.123) to article 19, paragraph 2 (*l*). It welcomed the two amendments proposed by Spain (A/CONF.62/L.109) to article 42, paragraph 1 (*b*), and hoped that they would find general acceptance. It would, however, have difficulties with the first amendment in that document which referred to article 39, paragraph 3 (*a*). Nor could the United Kingdom support the amendment proposed by France to article 230 (A/CONF.62/L.106). It also continued to oppose the establishment of a Common Heritage Fund, as proposed by Lesotho (A/CONF.62/L.115).

64. The amendment France had proposed to article 60, paragraph 3, in document A/CONF.62/L.106 set out detailed standards which would properly be decided upon by the competent international organization following a more thorough examination of the problem than was possible in the closing weeks of the Conference. Although it understood the French concerns, it would therefore oppose that amendment. He again expressed his thanks to all those delegations that had supported the United Kingdom amendment to article 60, paragraph 3 (C.2/Informal Meeting/66), which now had the support of the Collegium for inclusion in the draft convention.

65. The two amendments proposed to article 309 (A/CONF.62/L.108 and L.120) might result in damaging reservations being made to the crucial provisions of the convention and his delegation would therefore wish article 309 to remain unchanged.

66. It found unacceptable the proposal of Spain (A/CONF.62/L.109), to replace paragraph 2 of draft resolution III by the second paragraph of the Transitional Provision of the draft convention. The paragraph was contrary to international law on the rights and duties of States with regard to territories they administered and was, in particular, in direct conflict with article 73 of the United Nations Charter. It had been his delegation's understanding that the text in document A/CONF.62/L.94 was acceptable to all interested parties.

67. Mr. AGUILAR (Venezuela) introduced his delegation's proposed draft amendment to article 309 (A/CONF.62/L.108). His delegation had earlier explained why it felt that States should be allowed to make reservations with regard to articles 15, 74, 83 and article 121, paragraph 3. Venezuela's position on the question of reservations had been consistent throughout the ninth and tenth sessions. Even earlier, during the first Conference it had specifically expressed reservations on article 12 and article 24, paragraph 3, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,[4] and article 6 of the 1958 Geneva Convention on the Continental Shelf.[5]

68. Venezuela had also invariably maintained that questions regarding the delimitation of ocean and undersea spaces should be resolved by equitable agreement among the parties concerned. Delimitation of that kind had to take into account various questions of judgement and factors that varied from case to case. The practice of States showed that no single method but rather a combination of methods had been used to achieve an equitable solution in the majority of agreements on delimitation of ocean spaces. That approach had in the last three years produced satisfactory agreements between Venezuela and four neighbouring States, the United States, the Netherlands, the Dominican Republic and France, and those agreements covered more than 50 per cent of the areas that Venezuela had to delimit. It hoped that it could reach equitable agreements with the other neighbouring States. Venezuela's position was based upon the jurisprudence of the International Court of Justice and recent arbitral awards.

69. Essentially bilateral problems, which often affected vital interests and differed widely, were not always adequately solved by general provisions established in multilateral conventions. Venezuela believed that such conventions could well omit provisions establishing delimitation criteria but, if they did include them, States which took issue with some of those criteria must be allowed to make reservations. Authorizing such reservations could not in any way affect the basic structure or the content of the draft convention. The Venezuelan draft amendment referred only to reservations on the question of delimitation and had no further implications for the basic parts of the draft convention which were by definition universally applicable. Over the years Venezuela had taken part in the efforts to achieve a universal convention and felt that it would be a misfortune if debarring the possibility to make reservations on the question of delimitation were to prevent some States from acceding to the convention.

70. When it was not possible to arrive at agreement by consensus other methods must be sought to allow States to become parties to the convention without violating their rights and practices in defence of their own interests. The problems at issue were bilateral. The groups representing special interests, such as the group of 29 and the working group of 21, favoured one position or the other in such questions. In the circumstances, consensus was not feasible. Dissenting States should be allowed to become parties to the convention by entering reservations on the provisions they could not accept.

The meeting rose at 12.55 p.m.

[4] United Nations, *Treaty Series*, vol. 516, No. 7477, p. 206.
[5] *Ibid.*, vol. 499, No. 7302, p. 312.