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169th meeting

Thursday, 15 April 1982, at 3.20 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*)

STATEMENTS ON AMENDMENTS (*continued*)

1. Mr. LACLETA MUÑOZ (Spain) said that most of the amendments which he proposed in A/CONF.62/L.109 referred to the question of straits. His country's initial approach to that matter, as set forth in a written statement (A/CONF.62/WS.12),[1] had been to support the consolidation in the convention of the existing provisions of customary law concerning the right of innocent passage without possibility of suspension. However, in the interests of reaching a consensus Spain had been willing to accept the right of transit passage for ships, subject to improvement in the provisions concerning control of pollution, but continued to object to the provisions regarding overflight by military aircraft. The Spanish suggestions had not been taken properly into account in the discussions on the draft convention, and the proposed amendment to article 39 represented a last attempt to incorporate those suggestions in the draft convention.

2. The problem was that the régime of transit passage through straits established by Part III of the draft convention imposed on coastal States a heavy burden for which there were no offsetting provisions in the text. In the interest of consensus his delegation had refrained from proposing amendments to article 38 on right of transit passage, though he did not necessarily accept it. However, article 39, paragraph 3, contained rules for military aircraft which he could not accept as at present drafted. To say that military aircraft should "normally" comply with safety measures imposed no actual obligation on them at all, nor was there any indication of who would decide what was normal and what criteria would be applied. The only effective requirements would be that for its own safety a military aircraft should observe navigational safety and maintain radio watch. The requirements were essentially subjective and it would be impossible to verify compliance with the regulations.

3. Article 39, paragraph 3, as drafted would leave military aircraft virtually unlimited freedom and would therefore represent a threat to coastal States bordering straits and for international civil aviation in general; the proposed amendment to delete the word "normally", was designed to remove, at least partially, that threat.

4. Article 42 referred, in subparagraph 1 (*b*), to applicable international regulations, but the problem was that the applicability of particular regulations might depend on the flag of the ship concerned, and so it would become impossible to establish an objective régime. He therefore proposed to delete the word "applicable" and replace it by "generally accepted", which was the phrase used in article 211, paragraph 2. The purpose of deleting the word "oily" was to make the text broader by including all kinds of wastes.

5. The idea behind article 221 as drafted was that coastal States had full rights within their territorial sea and therefore it was necessary to confirm only their rights in international law beyond their territorial limits. However, the rights of coastal States in straits were limited by articles 42 and 233 of the draft convention. The purpose of the amendment, which would delete the words "beyond the territorial sea" was to give coastal States bordering straits the same powers in their territorial sea as other States enjoyed beyond the territorial sea.

6. The purpose of the proposed amendment to article 233 was to bring it into line with the similar provisions of article 34, which stipulated that the régime of passage through straits did not affect the legal status of the waters forming such straits. That proviso was not in article 233.

7. With regard to draft resolution III contained in document A/CONF.62/L.94, he had no difficulty with the transitional provision set forth in the draft convention but expressly reserved his position on the draft resolution which purported to replace those provisions, and he proposed that paragraph 2 of draft resolution III be replaced by paragraph 2 of the transitional provision in the draft convention.

8. With regard to other amendments which had been proposed, he agreed with the classification of amendments made by the representative of Peru at the previous meeting. He objected to any change in the substance of articles 56, 62, 69, 70 and 71 of the draft convention and therefore would be unable to support the amendments proposed in A/CONF.62/L.96, L.99, L.107, L.112 and L.114.

9. Two draft amendments (A/CONF.62/L.108 and L.120) related to the formulation of reservations. It was obvious that making reservations might be an easy way out, but he thought it was contrary to the spirit of the negotiations. He would therefore oppose any proposal for the admission of specific reservations or for the deletion of article 309 of the draft convention.

10. He had some doubts regarding the amendments proposed in A/CONF.62/L.110, L.111 and L.126; that did not mean that he automatically accepted other amendments which he had not mentioned.

11. Mr. MONNIER (Switzerland) introduced, on behalf also of Austria, Greece, Spain and Turkey, the proposed amendment (A/CONF.62/L.100) to article 161, paragraph 1, concerning the composition of the Council. That proposal derived from a suggestion made some years ago by a number of medium-sized industrialized countries and was taken up again particularly in document A/CONF.62/WG.21/Informal Paper 19 of 25 March 1982.

12. The principle of equitable geographical distribution did not apply to subparagraphs (*a*) to (*d*) of article 161, paragraph 1, which was intended to meet special interests, but to subparagraph (*e*), which was intended to offset the advantages given to groups of countries representing special interests. Consequently, many small and medium-sized industrialized countries would be excluded from the Council, where, by virtue of the principle of equitable geographical distribution, the large majority of seats to which they were entitled were reserved for groups of countries representing special interests. The effect of subparagraph (*e*) of paragraph 1 was to give only one seat for more than 12 eligible countries, each of which could thus be elected to the Council once every 48 years at most. That situation was inequitable, particularly in view of the not inconsiderable financial obligations which those countries would assume on becoming parties to the convention; nor would they benefit directly or indirectly from the

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XIV (United Nations publication, Sales No. E.82.V.2).

advantages which other industrialized or developing countries could derive from Part XI of the convention. He therefore proposed that the size of the Council should be increased from 36 to 38 members by adding one to the six elected members from among developing States under subparagraph (*d*), and adding one to the 18 elected members under subparagraph (*e*), at least one of which would be an Eastern European (socialist) State and at least two would be from other geographical regions. That was of course only one way of meeting the objectives proposed, and a more thorough analysis might allow other valid ways to be found of achieving the same objective.

13. Other proposed amendments regarding the composition of the Council had been submitted. The amendment he had submitted would not exclude such proposals but would in fact complement them to the extent to which they reflected legitimate concerns which deserved interest and thus conciliation. In particular, the amendment in document A/CONF.62/L.100 went in the same direction as that proposed in document A/CONF.62/L.104, of which it developed one particular aspect. The delegations on behalf of whom he was speaking were ready to discuss the matter, and he had no doubt that it would be possible to come up with a solution acceptable to all concerned.

14. Speaking as the representative of Switzerland alone, he opposed any proposal to amend or delete articles 309 and 310. If such amendments were adopted, they would lead to the negation of all the efforts made so far and finally to the destruction of the convention itself.

15. Mr. McKEOWN (Australia) introduced the amendment (A/CONF.62/L.98) to article 150 of the draft convention on behalf of his own delegation and Canada.

16. A cursory examination of article 150 confirmed the general principle underlying the negotiations, that the exploitation of the resources of the sea-bed, which were the common heritage of mankind, should be based on fair economic practices.

17. That principle was also implicit in other provisions of the draft convention, annex III, article 13, paragraph 1 (*f*), for example.

18. Thus, it was clearly the intention of delegations that the development of the resources of the sea-bed should be based on fair economic practices, and the co-sponsors of the proposed amendment believed that what was implicit in the text should be made explicit.

19. Moreover, it would introduce distortions into the convention system if States were to feel constrained to subsidize the operations of pioneer investors in order that they could come within the scope of the special provisions covering such investments. It was not necessarily the intention of parties to engage in such practices, but nevertheless a specific provision on that subject could only strengthen the convention.

20. While an explicit provision on unfair economic practices might be thought to benefit only land-based producers of minerals derived from the sea-bed, the co-sponsors believed that it was also essential to protect the Enterprise from such practices. It would greatly disadvantage the Enterprise if resort to practices which distorted market conditions brought about a situation in which major consumers of minerals derived from the sea-bed were able to meet all their needs without ever having to have recourse to the international market. A situation could even arise in which the Enterprise might find that it had no market for the metals derived from the reserved areas. It was for those reasons that the co-sponsors felt that a provision on unfair economic practices was necessary.

21. It had been said that the matter of economic practices was dealt with in other international agreements and it was therefore inappropriate to deal with it in the draft convention. The co-sponsors did not wish to usurp the functions performed by the General Agreement on Tariffs and Trade (GATT), and in fact the second and third sentences of the proposal recognized the primacy of GATT in areas where it had competence. However, the parties to the convention might include countries not members of GATT or not parties to its Subsidies Code. In any case, when formulating a draft convention which included a specific régime of a highly innovative kind, it was appropriate to include general principles notwithstanding that in practice some matters might be regulated elsewhere. In other parts of the draft convention, the Conference had included universal general principles although some specific subject matter had already been dealt with in other international instruments.

22. Some delegations had objected that unfair economic practices were not defined; however, the GATT provisions, including the Subsidies Code and its illustrative lists, provided useful guidance for the sorts of practices which would be proscribed. It would be undesirable to attempt any exhaustive definition of unfair economic practices in the convention; it was enough to state the general principle in the hope that detailed understandings would evolve which would draw on experience under GATT. The second and third sentences of the proposed amendment would encourage development along those lines; for example, it would be the GATT disputes settlement mechanism which would be used in disputes where all the parties were members of GATT.

23. The co-sponsors had no intention of inhibiting in any way the participation of developing countries in sea-bed mining operations. The first and second paragraphs of article 14 of the GATT Subsidies Code expressly accepted that subsidies were an integral part of economic development programmes of developing countries, and that developing country signatories could adopt measures and policies to assist their industries. There was thus no prospect of the amendment inhibiting the genuine efforts of developing countries to encourage the development of their own sea-bed mining industries.

24. Mr. PUNO (Philippines), introducing the amendment in A/CONF.62/L.117 on behalf of the sponsors, pointed out that the list of sponsors should include Djibouti. He requested also that the French text be brought into line with the English text. He recalled that there had been discussions concerning the failure of the Conference to resolve the issue of the innocent passage of warships in the territorial sea. To assist the search for an acceptable compromise, the co-sponsors had submitted a formal amendment to article 21 to enable the President and the Collegium and the Conference to continue the search for a successful solution of a problem of vital concern to many delegations, and to improve and clarify the text.

25. In recent plenary meetings, several delegations, opposing an informal proposal dealing with the innocent passage of warships, had preferred to retain article 21 as at present drafted. He understood the desire of those delegations to end negotiations and adopt the convention. Nevertheless, the Conference last year had deferred final decision on the express desire of one delegation to review an entire chapter of the draft convention. It should not be too much, therefore, to ask the Conference to reconsider just one subparagraph about which more than 50 delegations had expressed concern.

26. As regards the wording of the proposed amendment, his delegation had advocated the inclusion in article 21, paragraph 1, of a subparagraph on the competence of a coastal State to adopt measures that would require prior authorization or notification for the passage of warships through the territorial sea. In that context, a former Secretary of State of the United States had stated that warships could not pass without consent into a territorial zone because they threatened. To the question of what those warships threatened there could be only one answer: they threatened

the security of the coastal State. Some of the delegations opposing the proposal had expressed reluctance to consider amendments to the requirement for prior authorization or notification. He thought that the addition of the word "security" would meet the concern of the sponsors while finding greater acceptability by maritime States.

27. Mr. WARIOBA (United Republic of Tanzania) said that the amendments before the Conference represented a departure from the understanding on which the Conference was based and would, if adopted, jeopardize both the convention itself and the rights and aspirations of the overwhelming majority of participants in the Conference.

28. His own delegation had considerable problems with many provision in Parts II, III, V, XI, XII, XIII and XV and several of the annexes. However, in deference to the spirit of understanding that had prevailed in the negotiations, his delegation had decided not to submit amendments. The amendments contained in documents A/CONF.62/L.121, L.122 and, most particularly, L.104 were disturbing in that they related to issues which had been the subject of the longest and most gruelling negotiations in the history of the Conference. The results of those negotiations had been as positive as negotiations on such a difficult subject could be.

29. The issues raised in Part XI had been the immediate preoccupation of the United Nations when, in 1967, it once again directed its attention to questions relating to the law of the sea. Since that time, Part XI had been the subject of the most intricate negotiations, and the fact that the Conference had not been able to complete its work before 1982 was due, not to the failure of the Conference to reconcile itself to the results achieved in 1980, but to the respect it had shown to an important member of the world community which had requested further time to re-read and understand the final document. It had been hoped, and indeed expected, that the delegation of the United States would read what had generally been considered to be the final result both in conjunction with its own interests and in the light of the interests of the world community as a whole and the process of give and take which had produced the draft convention. It now, unfortunately, appeared that that was not the case. Worse still, other delegations seemed to have decided to turn their backs on the Conference.

30. When the subject of the Area and resources below the sea was first raised, it was generally recognized that the Area would be used for the arms race if no action was taken. There was also a likelihood that there could be a scramble for those resources, with the risk of attendant destructive armed conflict, and that the resources not within the national jurisdiction of any State would be seized by a few States for their own enrichment. Finally, it was feared that the result of unregulated introduction of minerals from the sea into markets which were already competitive would hurt many developing countries that were substantially dependent for their survival on land production of the same minerals.

31. In the effort to avert such dangers, the international community had succeeded in adopting a convention prohibiting the use of the Area for the emplacement of weapons of mass destruction, and it had unanimously adopted a Declaration affirming that the Area and its resources were the common heritage of all mankind. Although not all were agreed on the definition of the concept of a common heritage, it was true to say that all were determined to reach a compromise, to be reflected in a universal treaty.

32. It would be recalled that, at the beginning of the Conference, there had been a wide gap between the position of the Group of 77 and that of the industrialized States, and that to resolve the deadlock the Group of 77 had accepted, by way of compromise, the so-called "parallel system" proposed by the then Secretary of State of the United States, Dr. Kissinger. The Group of 77 had reconciled itself to that proposal with considerable misgiving, since some members felt that the system would lead to a kind of *apartheid* by which the Area would be divided into two halves, one for the rich few and one for the impoverished many. They were none the less consoled by the proposal to establish an Enterprise through which the poor majority would be able to participate in the exploitation of the resources of the Area, and would be guaranteed both technology and financial capital and areas of established commercial value which had already been surveyed. It was also proposed that the parallel system would operate for a period of not more than 20 years, after which there would be a review conference with the option of changing the system.

33. Part XI and annex III showed that the Authority had almost no discretion on the granting of contracts, approval of plans of work and production authorization in the unreserved area. The amendments currently before the Conference, and particularly those contained in documents A/CONF.62/L.121 and L.122, sought to remove whatever functions there were for the Authority and to vest them in States. The function of the Authority would therefore be no more than to record events.

34. With regard to the so-called "reserved area", the amendments sought to give absolute power to those who had secured a large area of the common heritage for themselves. They wanted the real power to be vested in a Council in which they had permanent membership and an absolute veto. Production policies did not adequately protect land-based producers, and the amendments were intended to remove whatever production limitation was currently embodied in the text of the draft convention as contained in document A/CONF.62/L.78.[2] The provisions of that document failed to specify who would be held responsible for the transfer of technology to the Enterprise, and the amendments sought to remove whatever element of obligation there was. The bulk of the burden of financing the Enterprise had been placed on the developing countries, and the review Conference would be unable to change the system automatically even if the parallel system became untenable. The amendments sought not only to lay down procedures which would paralyse the review Conference but would also make sure that whatever emerged from it would be ineffective unless it had the blessing of a select few.

35. It was to be hoped that the Conference would not be called upon to start negotiations afresh. His delegation felt betrayed by the succession of promises that had been broken over the previous eight years, and would find it difficult to enter into renewed negotiations with any confidence of good faith. In 1976 Dr. Kissinger, with all the prestige of his office as a representative of the United States, had made firm promises which had led to the acceptance of the parallel system by the Conference. However, while the Conference was working on Part XI, the United States and its allies were enacting unilateral legislation. The greater portion of Part XI had been formulated by the sponsors of draft resolution A/CONF.62/L.121. In the period between 1978 and 1980, when the majority of delegations were excluded from the negotiations, Belgium, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and the United States were constantly engaged in negotiations. In 1980 those countries were parties to the consensus which had emerged in the Conference. In 1981, however, the Conference had been stunned by the actions taken by the United States, but genuine efforts had been made to understand the meaning of those actions, and patience had been exercised by the Conference for a whole year. During that time the sponsors of draft resolutions A/CONF.62/L.121 and L.122 were negotiating their mini-treaty in Brussels and elsewhere. What had been witnessed during the current session was a concerted effort by those delegations to substitute their mini-treaty for the text

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

contained in document A/CONF.62/L.78. He did not believe that those delegations were interested in any convention that did not accord with their unilateral actions and the mini-treaty they were engaged in negotiating. That was clearly shown by the negotiations at the current session of the Conference on preparatory investment protection. Indeed, the new paragraph 5 which they proposed to add to Article 151 was an attempt to incorporate the mini-treaty into the convention in the guise of preparatory investment protection.

36. In conclusion, he said that it was the responsibility solely of the authors of the amendments contained in documents A/CONF.62/L.121 and L.122 to demonstrate that they had the interests of everyone, and the principles of justice and fair play, at heart. Any attempt to extract further concessions from the Group of 77 would serve only to render meaningless all that the Conference had achieved in respect of Part XI of the draft convention.

37. Mr. NAKAGAWA (Japan) said that it was a regrettable fact that, although the Conference had made considerable progress so far, there had been practically no substantive discussion with regard to the most difficult and crucial problem, namely the improvement of the existing text of Part XI.

38. As was well known, his delegation believed that if the convention was to be truly significant the participation of the United States was indispensable, and his delegation was therefore sponsoring the amendments contained in document A/CONF.62/L.121, which had been introduced by the United States delegation at the meeting held that morning. He hoped that the Conference would make earnest efforts to arrive at a consensus on improvements to the provisions of Part XI.

39. His delegation had submitted a proposed amendment contained in document A/CONF.62/L.105, on the question of the treatment of preparatory investment. Firstly, it was proposed to introduce in paragraph 1 (*a*) of draft resolution II (A/CONF.62/L.94) a new cut-off date of 1 January 1985 applicable to developing States; secondly, it was proposed that no entity could be divided into two or more entities during the period of eight months prior to 1 January 1983, an arrangement which would prevent an undesirable increase in the number of entities qualified to apply for preparatory investment protection treatment. Thirdly, the figure of 150,000 square kilometres mentioned in paragraph 1 (*e*) should be changed to 60,000 square kilometres; the proposed change in the size of individual "pioneer areas" was based on extensive studies carried out by his Government and was intended to ensure that a greater number of newcomers would be able to engage in activities in the Area.

40. His delegation took a favourable view of the amendments proposed by a group of 10 countries in document A/CONF.62/L.104. The proposals were in harmony with those of his own delegation.

41. With regard to the amendment to article 150 contained in document A/CONF.62/L.98, proposed by Australia and Canada, his delegation considered that matters concerning unfair economic practices were already sufficiently regulated in relevant multilateral trade agreements such as GATT and there was thus no need to include such a provision in the draft convention.

42. His delegation agreed with many others that the provisions relating to the matters dealt with by the Second and Third Committees were based on a very delicate balance, and should not be changed. Any further amendment would inevitably create additional difficulties in the search for consensus. His delegation was therefore unable to accept the proposals to amend article 21 contained in documents A.CONF.62/L.97 and L.117.

43. His delegation was similarly opposed to the suggested amendment concerning article 63, paragraph 2, contained in document A/CONF.62/L.114. It believed that any arrangement for the conservation of the stocks in question should be based on voluntary agreement between the parties concerned. With regard to the two proposed amendments contained in document A/CONF.62/L.126, submitted by the United Kingdom, his delegation could support the proposal to delete paragraph 3 of article 121, since such an amendment would have the effect of eliminating the illogicality of the existing text. His delegation could not, however, support an amendment on the same subject proposed by Romania in document A/CONF.62/L.118.

44. In conclusion, his delegation wished to stress again the importance of making every effort in the final stage of the session to arrive at a universally accepted convention by consensus.

45. Mr. KIRCA (Turkey) said that the question of reservations was a fundamental issue linked to the principle of the sovereignty of States, and as such should be handled with great care.

46. Until the scope of the convention became clear, it had been very difficult to decide what the content of the "reservations and exceptions" clause should be, which explained why the relevant article 309 was only provisional. Since the article had not been agreed upon, his delegation had submitted an amendment deleting it (A/CONF.62/L.120). Approval of that amendment would ensure that as many States as possible became parties to the convention—which was the essential precondition for the effectiveness of any treaty—because the opportunity to make reservations would naturally make it easier for certain States to become parties to the convention and thus would encourage its wider application.

47. The present text of the convention was clearly far from being the result of a consensus, and it was highly desirable that the convention should be adopted by the largest possible number of States. The purpose of his delegation's amendment, therefore, was to allow States to formulate reservations in accordance with the provisions of article 19 of the Vienna Convention on the Law of Treaties,[3] in other words, reservations which would be compatible with the aim and object of the future convention on the law of the sea. His delegation did not agree with those who had said that the opportunity to formulate reservations would endanger the delicate balance of the convention. It thought that the difficulties which a not inconsiderable number of States faced in regard to the convention had not been taken seriously enough in the past. The general principles expressed in the draft convention gave little scope in certain cases for resolving individual problems, which might assume alarming dimensions, perhaps even on the level of international relations world-wide. Some of those principles, for example, were not at all likely to lead to equitable solutions in the cases of smaller seas. For all those compelling reasons, his delegation desired and hoped that the Conference would be able to resolve the question of reservations in such a way as to permit all States to become parties to the convention.

48. Mr. MAZILU (Romania) said that the discussions in the Conference had shown that there was no consensus on the provisions of article 21 of the draft convention. Despite efforts to solve the problem of innocent passage of foreign warships through the territorial sea, no negotiations had taken place at either the current or previous sessions. It was necessary to clarify the text in order to make explicit mention of the legitimate right of coastal States to require prior authorization and notification for the passage of foreign warships through the territorial sea in the interest of protecting the national security of those States. With that end in view, his delegation fully

[3] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

endorsed the amendments to article 21 contained in documents A/CONF.62/L.97 and L. 117. The right to prior authorization and notification was based on the principles of the sovereignty and territorial integrity of each State, principles which were universally accepted in international law and in the practice and legislation of a large number of States. In exercising its sovereignty in the territory to which the territorial sea belonged, the coastal State had the indisputable right to adopt appropriate laws and regulations to protect its security.

49. The point was one which had been raised frequently in the Conference by delegations from all geographical regions and from countries with different social and political systems. Reluctance to accept such a legitimate requirement was impossible to understand at a time when the Conference was endeavouring to finalize the text of a convention intended to affirm the principles of justice and law in the maritime field.

50. His delegation had expressed its view that article 70 was unsatisfactory at preceding sessions of the Conference, and in particular at the resumed eighth session. Romania was a geographically disadvantaged country in that it was coastal to a semi-enclosed sea poor in living resources and was situated in a subregion which was itself lacking in such resources. The manner in which the problem of the right of access to the economic zones was to be solved in the new convention was therefore of vital concern to his country. The existing text of the draft convention did not take due account of the legitimate interests of his country and those of some other countries in the same geographical situation. For geographically disadvantaged States, access to the living resources of the economic zone was contemplated only within the region or subregion to which those countries belonged. For countries or regions where there were fishery resources the situation was more or less settled, but for geographically disadvantaged States situated in a region or subregion poor in such living resources, the existing provision was of no practical value. It was essential to avoid inflicting economic injury on countries which had limited living resources and which bordered enclosed or semi-enclosed seas and were thus dependent on exploitation of the living resources of the exclusive economic zones of States situated in other regions or subregions.

51. His delegation thus considered it necessary to introduce a new paragraph after paragraph 1 of article 70, providing that "if the region or subregion where States with special geographical characteristics are situated is poor in living resources, the rights of those States under paragraph 1 shall apply to the neighbouring regions or subregions" (A/CONF.62/L.96). That proposal was in accordance with an elementary idea of justice and with the main objective of the Conference, namely to arrive at a universally acceptable convention which took into account the interests of all States.

52. The question of islands was important both for the delimitation of maritime spaces between coastal States and for the determination of the international Area. The tremendous diversity among islands gave some idea of the complexity of the problem, a problem for which generalized solutions were no longer adequate. State practice, customary law and international legal theory showed that there was widespread agreement on the need to distinguish between rocks and islets which could not sustain human habitation or economic life of their own, on the one hand, and islands proper, on the other. To subject all types of islands to a single régime would be unjust and inequitable. His delegation had given careful consideration to all delegations' views on the subject and had adopted a flexible position, presenting proposals which took into account the legitimate rights and needs of all interested States. The item had not been discussed properly, however, and some delegations had even insisted that it must be settled in conjunction with the delimitation of the territorial sea.

53. It was hardly surprising, therefore, that article 121 as currently formulated was not satisfactory to many interested States. Paragraph 3 of that article referred only to rocks, while any reference to special circumstances had disappeared from the draft convention. The amendment presented by his delegation was designed to improve the content of article 121 by adding a new paragraph which provided that "Uninhabited islets should not have any effects on the maritime spaces belonging to the main coasts of the States concerned". Such a provision was in accordance with the practice of many States and with existing international judicial practice, and would prevent any State from encroaching on the maritime zones of another State by invoking the existence of uninhabited islets in the delimitation area.

54. His delegation believed that it was essential to improve on article 310. Under existing international law, all States, when they came to sign, ratify or accede to a multilateral treaty, had the right to make interpretative declarations or statements regarding the provisions of that treaty. Since article 310 as currently formulated was open to different interpretations, his delegation had proposed an amendment which made it clear that such declarations should be made in conformity with international law.

55. With regard to reservations to the convention, his delegation objected strongly to article 309. States parties had an undisputed right under international law to make reservations to any multilateral treaty, in order to protect their interests. That was a question of principle related directly to the sovereignty of States. His delegation therefore supported fully the proposal contained in document A/CONF.62/L.120.

56. As a sponsor of the amendment contained in document A/CONF.62/L.112, his delegation hoped that the improvement which it proposed to article 62 would be accepted. At the same time, for the reasons given with regard to the régime of islands, it could not accept the United Kingdom amendment proposed to article 62.

57. His delegation could not accept the amendment proposed to article 19 in document A/CONF.62/L.123, nor that to article 63, contained in document A/CONF.62/L.114.

58. In conclusion, it was essential that all amendments be given the same treatment in order to guarantee every possibility for meaningful negotiations aimed at finding generally acceptable solutions to all outstanding questions.

59. Mr. ROBLEH (Somalia) recalled that his delegation had recently reiterated its conviction that the present text of the draft convention was the best possible basis for a law of the sea convention which would replace the current anarchy on the oceans by order, peace and tranquillity, and its belief that the developing coastal States had made the most sacrifices in the quest for a universally acceptable convention.

60. With regard to the amendments proposed to Part XI, his delegation subscribed fully to the position of the Group of 77 and would support any amendments proposed by the Chairman on the Group's behalf aimed at clarifying and refining the text. At the same time, it strongly opposed all amendments aimed at undermining the mini-package on Part XI and the related annexes.

61. His delegation supported the amendment proposed by Iraq in document A/CONF.62/L.101 regarding participation in the convention by national liberation movements, and the idea of replacing the title DRAFT DECISION OF THE CONFERENCE by DRAFT RESOLUTION IV.

62. With regard to matters referred to the Second Committee, as a small, developing coastal State, Somalia felt that the provisions of Parts II and III relating to navigation did not offer even the minimum security guarantees to small, vulnerable coastal countries: all the concessions had been one-sided. According to a recent issue of the legal journal *Marine Policy*, the new legal régime for navigation in general and submarines in particular proposed by the draft convention represented a substantial improvement on the draft convention prepared for

the 1930 Hague Conference by the International Law Commission of the League of Nations and the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone[4] negotiated at the first United Nations Conference on the Law of the Sea. Both of those Conventions, however, had contained provisions stipulating that submarines must navigate on the surface and show their flag within the territorial waters of coastal States. The present draft convention did not contain even the minimum requirements regarding the passage of submarines that were to be found in the earlier and, supposedly, less equitable conventions. As a result, the minimum acceptable to developing coastal States was the amendment proposed by 28 coastal States in document A/CONF.62/L.117, which would add the word "security" after the word "immigration" in paragraph 1 (*h*) of article 21.

63. With regard to Part V, a delicate balance had been achieved in the provisions relating to the exclusive economic zone, and any subtle change would upset the mini-package agreed upon after so many years of work. His delegation therefore was strongly opposed to any amendment of articles 61, 62 *et seq.*, while it gave unqualified support to the amendment to article 63 proposed in document A/CONF.62/L.114, which sought to protect fish stocks in the exclusive economic zone and in an area beyond and adjacent to it.

64. His delegation continued to hope that, through collective wisdom and the community of interests shared by participants, the Conference would be able to sign the final act by 30 April.

65. Mr. BOS (Netherlands) said that the Conference had yet to find a way out of the current impasse. His delegation accordingly welcomed the proposed amendments contained in document A/CONF.62/L.104. Although they could be improved upon in places and did not necessarily cover all the unresolved aspects of Part XI, they represented a very important contribution to the objective of reaching a final consensus.

66. In pursuing that objective, his delegation believed that the solution of the problem of preparatory investment protection was of crucial importance. It supported the proposal in document A/CONF.62/L.122, on the understanding that the Netherlands was included in the definition of certifying States. It could also support the second amendment submitted by Japan in document A/CONF.62/L.105 relating to draft resolution II. The amendments which had been submitted relating to the Council's composition, procedure and voting deserved further attention.

67. His delegation remained opposed to what had been proposed in document A/CONF.62/L.97 and found the proposals in A/CONF.62/L.117 equally unacceptable because, once accepted, they would create ambiguities regarding the extent to which a coastal State was entitled to adopt rules and regulations governing innocent passage through the territorial sea. It supported the amendment in document A/CONF.62/L.119 and could also accept those in document A/CONF.62/L.101 and the second amendment in document A/CONF.62/L.109. The fact that it refrained from commenting on all the other amendments did not necessarily signify approval of them. He hoped that the remaining issues might be settled through informal negotiations.

68. Mr. KALONJI TSHIKALA (Zaire) said that his delegation had proposed several amendments in document A/CONF.62/L.107 which were designed to improve the text of the draft convention, eliminate contradictions and achieve a more equitable balance between the positions of different States.

69. With regard to Part V, his delegation believed that articles 62, 69 and 70 formed an organic whole and must be read in conjunction with one another. The text of those articles contained contradictions and discrepancies in terminology which could create confusion and were legally incorrect. The term "surplus", for instance, was extremely ambiguous and seemed to mean different things in different articles. His delegation's main problem was with the apparent turnabout in article 69, paragraph 3, and article 70, paragraph 4, which made it even more difficult to understand what was meant by "surplus". The expression "approaches a point" used in those paragraphs could lend itself to different interpretations. If it meant that a coastal State could co-operate with land-locked States or States with special geographical characteristics only when it had the capacity to harvest almost all of the entire allowable catch, then it openly contradicted article 62, paragraph 2, which simply required the coastal State to reserve for itself the catch corresponding to the harvesting capacity which it had determined for itself. His delegation was therefore proposing that article 69, paragraph 3, and article 70, paragraph 4, should be aligned with article 62, paragraph 2, as amended in document A/CONF.62/L.107.

70. Paragraphs 2 and 3 of article 62 also contained legal inconsistencies. "To give access" was a unilateral action, while an "agreement" was a negotiated bilateral or multilateral action, and the two concepts could not be used in the same context.

71. With regard to the substance of the articles, the rights of land-locked States and States with special geographical characteristics must be real and not simply theoretical. The idea behind the articles in question was that the living resources of the exclusive economic zone must be exploited in the best possible way. That was what had motivated the amendments proposed by his country to article 62, paragraph 2 (A/CONF.62/L.107), which would permit land-locked countries and countries with special geographical characteristics to take the surplus determined not only in terms of a theoretical capacity but also in terms of the real available catch. The amendments would replace the term "surplus" by the words "available catch" throughout, and would make it clear that what was envisaged in that paragraph was co-operation between the countries concerned and not unilateral action on the part of coastal States. The wording of article 69, paragraph 3, and article 70, paragraph 4, would then be aligned with article 62, paragraph 2, and commence as follows: "Pursuant to article 62, paragraph 2, the coastal State and other States concerned shall co-operate with a view to concluding . . .".

72. His delegation saw no point to article 71, which it considered to be superfluous and likely to create unnecessary problems. Its provisions were already covered by article 62, paragraphs 2 and 3, article 69, paragraph 2, and article 70, paragraph 3. Besides, if a coastal State was overwhelmingly dependent on fisheries but did not have the capacity to harvest the entire allowable catch, why should it not allow land-locked States and those with special geographical characteristics to take the available catch until it had the capacity to harvest the entire catch itself? Since the objective of articles 62, 69 and 70 was the optimum exploitation of the living resources of the zone, the introduction of other, non-objective criteria would make bilateral or regional agreements difficult, if not impossible, to conclude.

73. Article 75 *bis* proposed by his delegation was designed simply to improve the functioning of the co-operation between coastal States and land-locked States and those with special geographical characteristics. Such co-operation must be carefully and equitably defined.

74. With regard to the amendment proposed to article 151, paragraph 2 (*f*), article 151 set a ceiling for the extraction of nickel from the sea-bed but not for other minerals which might be extracted from polymetallic nodules, stipulating instead that production levels for those minerals could be

[4] United Nations, *Treaty Series*, vol. 516, No. 7477, p. 206.

lower than those for nickel but could not exceed them. That gave the Authority some leeway in determining production levels in the light of the provisions of article 150. The amendment proposed by his delegation simply clarified paragraph 2 (*f*) and restored balance and equity between all land-based mineral industries and in favour of the developing countries. The amendment was thus vital to Zaire and a number of developing land-based producers of the same minerals as those to be extracted from the sea-bed.

75. The ceiling set for nickel production in article 151 was too high and, since it was to be used to determine maximum production levels for other minerals, seriously threatened the cobalt and manganese industries of developing land-based producers. Sea-bed extraction of those minerals would have a disastrous effect on the fragile economies of certain developing countries, as had already been indicated in the preliminary report of the Secretary-General (A/CONF.62/L.84) and would no doubt be confirmed by a global study. Article 151 thus completely overlooked the principle of the common heritage of mankind, an omission which his delegation's amendment sought to remedy. According to the amendment, the Authority would determine what quantities of those minerals should be extracted, in the light of all the interests involved. It would not be in the interests of sea-bed producers to glut the market, a situation which would also be disastrous for the Enterprise. The interests of sea-bed producers, land-based producers and the Enterprise would thus all be protected by his delegation's amendment, and that would remove the need for compensation machinery and above all for a system of assistance to make the necessary economic adjustments.

76. Despite its limitations, his delegation supported the amendment proposed to article 171 (A/CONF.62/L.116) by the Group of 77, providing for the creation of a compensation fund as part of the system of compensation envisaged in article 151, paragraph 4. It believed, however, that the solution for present and future developing land-based producers lay in an overall approach to the problem of markets which would maintain a balance between the supply of minerals from the sea-bed and that from other sources. The Group of 77 proposal to insert a new paragraph 9 in the draft resolution establishing the Preparatory Commission, together with his delegation's amendment to article 151, paragraph 2 (*f*), met that concern.

77. Mr. ANDERSEN (Iceland) said that the most important thing at the present late stage was to achieve a consensus on Part XI of the draft convention; that was why his delegation had co-sponsored the proposals contained in document A/CONF.62/L.104, which should help to bridge the remaining gap.

78. Amendments relating to matters discussed in the Second Committee, on the other hand, should not be necessary at the current stage, since consensus had already been reached on the relevant articles and they represented a delicate balance which should not be disturbed. For example, the representative of Zaire had proposed various amendments (A/CONF.62/L.107) to articles 69 to 71, which constituted a package that had been arrived at after extensive negotiations and should not be amended or deleted. Article 71 was not "superfluous", as the Zaire representative had said, because it laid down a special rule for a country which was overwhelmingly dependent on the living resources of its exclusive economic zone. In such a case, any available surplus could be used for the benefit of that same country. The deletion of the article would be a change in substance, and his delegation firmly opposed it. It might be best if all proposed amendments to articles dealt with in the Second Committee were withdrawn, thus saving time which could be put to better use in solving the problems arising from Part XI.

79. The PRESIDENT commended the representative of Iceland for the brevity of his intervention, which could well serve as an example to other speakers.

80. He had only one further speaker on his list, namely, the representative of Peru in his capacity as Chairman of the Group of 77; however, that representative was not yet in a position to deliver his statement. He therefore suggested that the meeting should be suspended for 15 minutes.

The meeting was suspended at 5.40 p.m. and resumed at 6 p.m.

81. Mr. de SOTO (Peru), speaking as Chairman of the Group of 77, apologized for the delay he had caused and said he hoped that his statement might save the Conference some time by representing the views of the Group of 77 as a whole.

82. He drew attention to the amendments contained in document A/CONF.62/L.116, and noted with pleasure the President's remark at the previous meeting to the effect that the first two of them met the criteria laid down in document A/CONF.62/62[5] and should bring the Conference closer to a consensus.

83. He had written to the President on the previous day about the deletion of article 308, paragraph 4, which the Group of 77 still considered necessary.

84. In agreeing to negotiate on the question of preparatory investment, the developing countries had made a very substantial concession which could have far-reaching implications in the long term. He hoped that once satisfactory provisions relating to preparatory investment had been agreed upon, the industrialized countries would make fewer requests for changes in other parts of the text which had already been negotiated. The Group of 77, for its part, had made enormous concessions, and indeed felt that its interests had been considerably eroded. It therefore appealed to the industrialized countries not to try to make substantive changes in the amendments submitted by the Group, and warned that any attempt to renegotiate such essential elements of Part XI as the articles on transfer of technology, production policies, the Review Conference, and the composition and powers of the Assembly and the Council would in any case have little chance of success. He asked for caution and realism on the part of the developed countries. Meanwhile, the Group of 77 would remain open-minded and receptive to any proposals which might help in reaching a consensus, so long as there was still time to discuss them and provided that they were compatible with agreements already reached.

The meeting rose at 6.15 p.m.

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