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171st meeting

Friday, 16 April 1982, at 3.15 p.m.

President: Mr. L. BALLAH (Trinidad and Tobago)

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. KRAL (Czechoslovakia) said it was alarming that after 14 years of intensive negotiations some delegations were still submitting amendments reflecting the special interests of certain countries without regard to the well-known positions and interests of others. During those 14 years every effort had been made to find compromise solutions, and he did not believe it was possible to make any substantive change in the existing text without upsetting the delicate balance. In particular, no change could be made to the provisions worked out in the Second and Third Committees or to Part XV. His delegation also had serious misgivings about attempts to introduce changes into the provisions worked out in the First Committee. It opposed any attempt either to enable countries to make reservations to certain parts of the convention or to change the provisions relating to the composition and decision-making procedures of the Council.
2. His delegation was not satisfied with a number of the provisions of the draft convention. It had studied the proposed amendments which aimed to promote the interests of the land-locked and geographically disadvantaged countries, and found them just and equitable. Wishing to facilitate the success of the Conference and to promote legal order and peaceful co-operation on the seas, however, it had decided not to press for their inclusion. It would support any efforts which the President was authorized to make under rule 37, paragraph 2, subparagraph (c), of the rules of procedure, to facilitate the achievement of general agreement, but felt that those efforts should be concentrated on proposals seeking to clarify existing provisions, not on those designed to make substantive changes.
3. Mr. PARK (Korea) said that his delegation had refrained from submitting any formal amendments to the draft convention and draft resolutions, not because it was fully satisfied with them but because it believed that they constituted the best possible compromise texts.
4. It could not support the amendment to article 63, paragraph 2, in document A/CONF.62/L.114, because it introduced mandatory elements into the process of arranging for the conservation of certain fish stocks and involved time-consuming and unnecessarily complicated procedures. It also had difficulty in supporting the deletion of article 121, paragraph 3, proposed in document A/CONF.62/L.126, because it undermined the delicate balance achieved through the long process of negotiations on the régime of islands.
5. With regard to the amendment contained in document A/CONF.62/L.117, his delegation shared the sponsors' concern for security, but pointed out that it went beyond their intended purpose as it applied to all categories of vessels. His delegation preferred the Gabonese amendment (A/CONF.62/L.97) which was clearer in that it required notification or authorization only for warships. It was still convinced, however, that the adoption of a prior notification régime could meet the security concerns of the coastal States and at the same time offer the best hope of a consensus.
6. His delegation did not favour the draft amendments in document A/CONF.62/L.108 and L.120, although it understood that their purpose was to promote the widest possible participation in the convention. It believed that the present wording reflected the best possible approach to the complex question of reservations.
7. He hoped that the President would do his utmost to achieve consensus on the remaining outstanding matters up to the last day of the Conference and was pleased to note that a consensus had already emerged on the Iraqi amendment for a draft resolution to enable the national liberation movements participating in the Conference as observers to sign the final act.
8. Mr. MIKKELSEN (Denmark) said that his delegation was a co-sponsor of document A/CONF.62/L.104. It still believed that there was a real consensus on the need to preserve the fundamental elements of those parts of the convention which were within the competence of the Second Committee and that, with very few exceptions, the current wording of those parts constituted a satisfactory compromise text. It had not had time to study all the formal amendments, and the fact that it expressed opposition to only some of them did not mean that it accepted the rest. Most of the formal amendments, in particular those relating to subjects dealt with by the Second Committee would, if carried through, effectively undermine any hope of achieving a universally accepted convention. That applied particularly to the amendments to article 21 in documents A/CONF.62/L.97 and A/CONF.62/L.117. The proposal in document A/CONF.62/L.126 to delete article 121, paragraph 3, would also create grave obstacles in the search for a consensus. Without such a provision tiny and barren islands, looked upon in the past as mere obstacles to navigation, would miraculously become the golden keys to vast maritime zones. That would indeed be an unwarranted and unacceptable consequence of the new law of the sea.
9. He hoped that other delegations would raise no objection to the amendment to article 19 in A/CONF.62/L.123.
10. Mr. VAN TONDER (Lesotho) introduced his delegation's proposed amendment to article 124 (A/CONF.62/L.99), the purpose of which was to add aircraft to the means of transport listed therein. Land-locked countries such as Lesotho regarded aircraft as a most essential means of transport and did not wish to be deprived of any of the rights which the use of air transport might carry with it under the convention. His delegation was also proposing an amendment to article 62, paragraph 2, with a view to enabling developing land-locked countries to benefit in a small way from the exploitation of the allowable catch of the living resources of the exclusive economic zone of coastal States of the same subregion or region. That should not be too much to ask, considering that land-locked countries would not derive any other benefit from the convention. Coastal States had all the advantages, and his delegation felt that in return they should agree to share the living resources of their exclusive economic zones with neighbouring land-locked developing countries. There were many such countries and, if their interests were not served and safeguarded, the Conference would have failed in one of its main purposes. When participating in the exploitation of the zone, the land-locked States

would observe the laws and regulations referred to in article 62, paragraph 4.

11. On behalf of the sponsors of the Common Heritage Fund proposal, his delegation also proposed amendments (A/CONF.62/L.115) to articles 56 and 82. The developed coastal States would be required to contribute to the Fund, for the benefit of low-income developing countries, a modest proportion of the income they received from the mineral wealth of their exclusive economic zones. The proposal was morally appropriate because, under traditional international law, the wealth of the sea-bed was regarded as common property. The amendments would contribute to the realization of a just and equitable international order referred to in the preamble to the draft convention. In its present form the draft convention was weighted much too heavily in favour of the geographically advantaged countries, particularly the developed countries. As the Conference was prepared to consider adopting new proposals and arrangements in order to secure the accession of one very powerful State, it seemed not unreasonable to ask it to incorporate a proposal, already four years old, which would help many poor countries.

12. His delegation supported the amendments in documents A/CONF.62/L.101, L.102, L.103 and L.116.

13. Mrs. DEVER (Belgium), speaking on behalf of the 10 States members of the European Economic Community itself, said that she would comment on some of the draft amendments which had a particular bearing on matters of interest to the Community. The Community did not think the Conference should adopt the changes to article 62 proposed in documents A/CONF.62/L.99, L.107 and L.112, and to article 70 in document A/CONF.62/L.96. It also had reservations regarding the amendment to article 63 proposed in document A/CONF.62/L.114. With regard to the amendment in document A/CONF.62/L.98, the Community could not accept the inclusion in the draft convention of a provision which would extend the scope of the convention to areas clearly covered by other international agreements.

14. The Belgian delegation's consistent position on certain problems arising from Part XI had led it to sponsor, with one reservation on article 161, the amendments in documents A/CONF.62/L.121 and L.122. It had been said that by taking that position Belgium and the other sponsors had shown that they did not really want a convention. On the contrary, her delegation had repeatedly stressed its determination to work towards the adoption by consensus of a universal convention.

15. She then stated her delegation's position on some of the proposed amendments; failure to comment on others did not signify approval. Her delegation endorsed the amendment to article 60, paragraph 3, proposed in document A/CONF.62/L.106, which was a fair compromise between the text in document A/CONF.62/L.78¹ and the United Kingdom amendment in annex II of A/CONF.62/L.93. It had objections to the amendments to article 309 in documents A/CONF.62/L.108 and L.120 and to the amendments to article 21 in documents A/CONF.62/L.97 and L.117. It could, however, support the first amendment in document A/CONF.62/L.123.

16. Mr. SHASH (Egypt) said that his delegation had sponsored the proposal in document A/CONF.62/L.117 to add the word "security" in article 21, paragraph 1, subparagraph (h). Article 19, paragraph 1, stated that passage was innocent so long as it was not prejudicial to the peace, good order or security of the coastal State. Article 21 gave coastal States the right to adopt laws and regulations relating to innocent pas-

sage through the territorial sea in order to prevent infringement of various other laws and regulations which must include security laws if article 21 was to be consistent with article 19. He urged other delegations to examine the proposed amendment in that light. His delegation also supported the amendment to article 21 in document A/CONF.62/L.97.

17. To further progress towards a consensus, it was not proposing any further amendments, even though some articles did not serve his country's interests. It accepted the amendments in documents A/CONF.62/L.96, L.101, L.102 and L.116, and in paragraph 4 of document A/CONF.62/L.109. The fact that it had not commented on various other proposals did not necessarily mean that it either approved or opposed them:

18. Mr. MPEGA (Gabon) introduced the amendments in document A/CONF.62/L.97, the first of which was an amendment to article 21 previously submitted in document C.2/Informal meeting/58/Rev.1 of 19 March 1982. Since the territorial sea was an integral part of the territory over which a coastal State exercised its sovereignty, it followed that a coastal State was fully entitled to grant or deny access by foreign warships to that part of the sea. Moreover, the innocent passage of warships had a bearing on the military security of States, a problem which was not dealt with clearly enough by the amendment in document A/CONF.62/L.117. His delegation's amendment was more comprehensive as it would permit coastal States not only to take preventive measures but also to prescribe and apply, if necessary, coercive measures and sanctions against foreign warships which contravened its security laws and regulations. His delegation would, however, be prepared to reconsider its position if the amendment in A/CONF.62/L.117 could be improved upon sufficiently, for example, if subparagraph (h) could be reworded to read:

“(h) prevention and punishment of infringement of the military security, fiscal, customs, sanitation and immigration laws and regulations of the coastal State.”

19. His delegation's second amendment was related to article 160, paragraph 2, subparagraph (f). The proposed new wording was essential to bring out the full meaning of the amendment to article 171 proposed by Peru on behalf of the Group of 77 (A/CONF.62/L.116). He stressed how important it was for his delegation, in view of the substantial concessions already made by developing countries which were land-based producers of minerals, that the convention should provide for the establishment of a compensation fund. Neither article 171 as it stood, nor the amendment in document A/CONF.62/L.116, could legitimately be interpreted as establishing such a fund. His delegation could, however, support that amendment because it complemented its own amendment to article 160, which specified how the fund was to be set up.

20. His delegation had also submitted an amendment to the modified version of article 164, paragraph 1, in the memorandum issued by the Collegium (A/CONF.62/L.93), which it did not consider to be sufficiently precise; that amendment was based on article 164, paragraph 2, subparagraph (c), which empowered the Economic Planning Commission to examine any situation likely to lead to such adverse effects as referred to in article 150, subparagraph (g). It was clear from that subparagraph that the developing countries which were to be protected were those whose export earnings and economies would be adversely affected by activities in the Area, which must mean the land-based producers of the same minerals as were extracted from the Area. His delegation was also proposing a more flexible version of the third sentence of article 164, paragraph 1, to the effect that the Economic Planning Commission should include at least two representatives of developing States which were land producers of the

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).

same minerals as those which would be extracted from the Area. That wording was more in keeping with the spirit of article 150, subparagraph (g), which was referred to in article 164, paragraph 2, subparagraph (c).

21. His delegation proposed a similar amendment to article 165, paragraph 1, because the functions of the Legal and Technical Commission, notably those outlined in paragraph 2, subparagraphs (c) and (n), closely concerned the developing States which were land-based producers of the minerals in question.

22. He introduced his delegation's amendments to draft resolution II (A/CONF.62/L.94). The amendment to operative paragraph 1, subparagraph (a), was designed to remove the element of discrimination between developed and developing States. Since only a handful of industrialized countries would be in a position to explore and exploit the sea-bed within the next few years, his delegation feared that, if different criteria were applied to developed and developing countries, industrial corporations belonging to certain industrialized countries might turn that bias to their own advantage. In paragraph 1, subparagraph (b), the word "resources" should replace the expression "polymetallic nodules" which was too restrictive. His delegation supported the amendment to paragraph 1, subparagraph (e), in document A/CONF.62/L.116. It proposed the deletion of paragraph 13 of draft resolution II, because it felt that, if the convention did not enter into force after a number of years, the terms of the resolution relating to preparatory investment could not continue to apply indefinitely. It proposed that the wording of article 14 of the draft resolution in annex II of A/CONF.62/L.30 should be used instead.

23. All members must be aware that a balance had been struck at the expense of only the developing countries, particularly the land-based countries producing minerals, which alone would see their export earnings and their economies suffer appreciably as a result of the convention. The amendments which he had just proposed were of vital importance to his country, and their fate would strongly influence his delegation's decision whether or not to join in the consensus. His delegation was, however, still prepared to consider any proposals which might improve those amendments.

Mr. Momtaz (Iran), Vice-President, took the Chair.

24. Mr. HOUFFANE (Djibouti) expressed support for the amendment to article 21 proposed in A/CONF.62/L.117, of which Djibouti was a sponsor; for the amendments to articles 160, 164 and 165 proposed by Gabon (A/CONF.62/L.97); for the amendment proposed by Iraq (A/CONF.62/L.101) concerning national liberation movements; for the amendment concerning Namibia (A/CONF.62/L.102), and for all amendments submitted by the Group of 77.

25. Mr. BALLAH (Trinidad and Tobago) said that some of the amendments under discussion might, if accepted, improve the text, whereas others seemed to strike at the root of the aims of the convention itself and particularly Part XI thereof. He hoped that the present text of the draft convention would be adopted with minimal changes, and therefore firmly supported all efforts to reach general agreement.

26. He would support any amendment proposed by the Group of 77 and in particular that contained in A/CONF.62/L.116. On the other hand, he could accept neither the amendment to draft resolution I, paragraph 4, proposed by the Soviet Union (A/CONF.62/L.125), nor the proposal by the United States and other countries (A/CONF.62/L.122) regarding decision-making in the Preparatory Commission.

27. Parts II to X contained many compromises achieved after long negotiation and some of the proposed amendments

would upset the delicate balance of the package and undermine the universality of the convention. However, he could support some proposed amendments, and would give reasons for his objection to others, although if there were some which he did not mention that did not necessarily mean that he supported them.

28. Thus, he could not support the amendment proposed by France (A/CONF.62/L.106) to article 60, paragraph 3, which would specify with great precision how abandoned installations were to be removed, nor the amendment proposed in the same document to article 230, paragraph 2, because he preferred the formulation "wilful and serious" pollution used in article 19, paragraph 2 (h).

29. He could not support the Romanian proposal (A/CONF.62/L.111) to amend article 310 because, although there could be no objection to the proposed reference to international law as such, the text as it stood was a compromise worked out to protect the position of some States as parties to the convention, and signatories should therefore not be permitted to make reservations regarding fundamental terms of the convention.

30. He reserved his position on the amendment proposed by Lesotho (A/CONF.62/L.115) to articles 56 and 82 regarding the Common Heritage Fund, though he was sympathetic to the underlying idea.

31. He was opposed to the amendment put forward by Romania (A/CONF.62/L.118) for the addition of a paragraph to article 121 on uninhabited islets, and equally opposed to the deletion suggested by the United Kingdom (A/CONF.62/L.126) of article 121, paragraph 3; it would be most undesirable if an uninhabited mid-ocean rock could create entitlement to a surrounding 200-mile exclusive economic zone.

32. On the other hand, the draft convention did not give land-locked and geographically disadvantaged States sufficient access to the resources of the EEZ of neighbouring States and he was therefore sympathetic to the amendments proposed by Romania (A/CONF.62/L.96), Lesotho (A/CONF.62/L.99) and Zaire (A/CONF.62/L.107).

33. As a member of the Group of 77, his delegation had taken no final position on the amendments proposed by the group of 7 (A/CONF.62/L.121) or the group of 11 (A/CONF.62/L.104). He could accept most of the proposals of the latter Group, but their proposal to amend articles 158 and 160 would unnecessarily disrupt the relations between the Assembly and the Council. While acknowledging the efforts of the sponsors to deal with the transfer of technology, he thought their proposed amendments to annex III, article 5, eroded the guarantees which were essential if the Enterprise was to flourish.

34. The proposals of the group of 7 to amend articles 151, 153, 155, 161 and annex III, articles 5 and 9, were unacceptable. The addition of a new paragraph to article 151 would enable all pioneer investors to engage in sea-bed mining without reference to production ceilings, while the suggested amendments to article 153 would effectively deprive the Authority of its control over both limbs of the parallel system. The proposed amendment concerning the Review Conference would require all States to ratify amendments, thus allowing any one State to frustrate the will of the majority. The voting procedure proposed in the amendment to article 161 would not enhance the efficient functioning of the Council. His objection to the proposal regarding annex III, article 5, was the same as his objection to the proposal of the group of 11, namely, that it would erode guarantees, while the amendment to article 9 would further undermine the parallel system and might place part of mankind's heritage in the hands of a few private contractors.

35. Mrs. TNANI (Tunisia) said that she hoped that the Conference would adopt a universal convention by consensus.

36. Of the amendments proposed, those in documents A/CONF.62/L.101, L.102, L.116, L.119 and L.127 were generally acceptable and should help towards a consensus. She also supported the amendment proposed in A/CONF.62/L.117.

37. With regard to the proposed amendments to Part XI, and the two draft resolutions concerning the Preparatory Commission and the protection of preparatory investments, she supported the position of the Group of 77 in that she wished to preserve the basic elements of Part XI while remaining open to suggestions which would improve the text.

38. Articles 19, 39, 42, 56, 62, 70, 76, 82, 121 and 309 were properly balanced in their present form and should not be changed. She therefore urged the sponsors of amendments affecting them not to insist, so that the Conference could successfully conclude its work in time.

Mr. Ballah (Trinidad and Tobago) resumed the Chair.

39. Mr. JHA (Nepal) recalled that, at the tenth session, Nepal had joined in sponsoring a proposal for the establishment of a Common Heritage Fund (C.2/Informal Meeting/45/Rev.1) and, at the current session (166th meeting), had urged strengthening the provisions of the draft convention which classified the oceans beyond national jurisdiction as the common heritage of mankind. The proposal to establish a Common Heritage Fund was also intended to promote a new international economic order and narrow the gap between the haves and the have nots. For those reasons, he strongly supported the amendment proposed in document A/CONF.62/L.115 which would be a major step towards a more just economic and political order based on the redistribution of global resources, and would restore balance to a treaty heavily weighted in favour of the geographically fortunate and the developed States.

40. He also supported the amendment in A/CONF.62/L.99 concerning article 62, paragraph 2, because it would serve the interests of land-locked and geographically disadvantaged States which were poor in resources.

41. He welcomed the amendment in document A/CONF.62/L.103 which would increase the representation of disadvantaged States on the Council.

42. He also endorsed the appeal by the Chairman of the Group of 77 regarding protection for pioneer investors, the international Authority, transfer of sea-bed technology to the Authority, and the review procedure. He also supported the efforts of the President to reach consensus leading to the adoption of the convention in good time.

43. Mr. KOROMA (Sierra Leone) said that the amendment co-sponsored by his delegation (A/CONF.62/L.114) was aimed at conserving fish stocks straddling the exclusive economic zone and adjacent areas. It deserved support because it was objective and equitable. As a coastal State with a large territorial sea area, Sierra Leone was making a considerable concession in supporting such a proposal.

44. His delegation had joined with others in sponsoring the amendment in A/CONF.62/L.117, the object of which was to safeguard the security of the coastal States least able to protect themselves. Notwithstanding the potential threat posed by the passage of warships through their territorial waters, the sponsors, in a spirit of compromise, had reduced their original demands for authorization or prior notification. By the proposed amendment, a coastal State would be taking merely the minimum action necessary to protect its sovereignty and territorial integrity. The amendment had been introduced by the Peruvian delegation on behalf of the Group of 77 and therefore on behalf of Sierra Leone.

45. Speaking on behalf also of the group of African States, he emphasized that it had become customary in the negotiations for unilateral concessions to be made by the developing countries in favour of the industrialized countries. The argument that, because certain investors had conducted research on the relevant technology, they must be given a virtual monopoly of sea-bed mining destroyed the concept and framework of the common system. The amendments proposed by the industrialized countries (A/CONF.62/L.121 and L.122) were a direct challenge to the principle that the resources of the sea-bed belonged to mankind as a whole; furthermore, peoples who had been prevented from attaining independence would be deprived of any benefit from the Area if the proposal to change the wording of article 140 of the draft convention were to be adopted.

46. The quid pro quo for the parallel system of exploration and exploitation was supposed to have been the financing of the Enterprise by the industrializing countries and the transfer to the Enterprise of technology required to make it operational. There was to be a Review Conference at a date to be decided in order to ascertain whether the system had proved useful both to developing and to industrialized countries, and it was only on those conditions that agreement had been reached on the parallel system. The draft convention imposed a heavy burden on developing States in terms of financing a system which was not expected to pay any dividends for the foreseeable future. Moreover, the effect of the amendment to annex III, article 5, proposed in A/CONF.62/L.121 would be to make the transfer of technology no longer an obligation but a matter left to the discretion of contractors. The United States delegation and its allies would also like to do away with the Review Conference altogether, or make it subject to their agreement; that again was a retreat from an undertaking previously given. The Review Conference would not make changes in a system which was working satisfactorily; its purpose was rather to ensure that the parallel system was fair to all parties.

47. With those considerations in mind, the group of African States, acting in line with the recommendations of the Group of 77, had mandated him to state that no further dilution or concessions could be made with regard to the following provisions of the draft covenant: the production ceiling; the Review Conference; the transfer of technology; and the composition, procedure and voting provisions of article 161. Any further concessions regarding any of those provisions could lead to a unilateral system of exploration and exploitation unduly favouring the industrialized countries. Incidentally, the provisions of article 161 as at present drafted, particularly in relation to voting, were contrary to the Declaration of the Organization of African Unity on the Law of the Sea adopted at the thirty-fifth ordinary session of the Council of Ministers of the Organization of African Unity, held at Freetown, Sierra Leone, from 18 to 28 June 1980, a document which was officially before the conference.²

48. He supported the amendments proposed in A/CONF.62/L.101 and L.102. The Council for Namibia was a creation of the General Assembly and, if it felt competent to sign the convention, it was not for the Conference to decide otherwise.

49. The adoption by consensus of a universal convention would enhance the standing of the United Nations as an instrument of world peace and enable it to use international machinery for the advancement of the economic and social well-being of all nations.

50. Mr. CABELLO (Paraguay) said that throughout the Conference stress had properly been laid on the need to

² *Ibid.*, vol. XIV (United Nations publication, Sales No. E.82.V.2), document A/CONF.62/104.

recognize the sea and its resources as the common heritage of mankind. It was essential that the greater part of those resources should be used for the benefit of developing, and particularly the least developed, countries. His delegation accordingly supported the amendments submitted by Lesotho (A/CONF.62/L.115). His country had long been in favour of the establishment of a Common Heritage Fund and he noted from the statements made during the session that the idea enjoyed widespread support.

51. Mr. TARCICI (Yemen) said that there appeared to be no consensus on article 21 in its existing form. While the article dealt satisfactorily with such matters as customs and taxation, the vital question of the security of coastal States was largely ignored. His delegation therefore welcomed the amendment in document A/CONF.62/L.117. It was to be noted that the passage of a warship belonging to the navy of one State close to the coast of another State without good and sufficient reason could not readily be considered "innocent", however amicable the relations between the States. It would be difficult for the coastal State in such an instance not to regard the passage as an infringement of its sovereignty. The more prosperous maritime States stood to benefit from the Convention as a whole, and he hoped they would not oppose an amendment which was of crucial concern to coastal States.

52. Mr. KIM CHUNG (Viet Nam) said that it should be recognized that the draft convention, the changes incorporated therein, as set forth in document A/CONF.62/L.93, and the proposals in document A/CONF.62/L.94, were not wholly satisfactory to any of the participants in the Conference. In particular, his delegation had difficulty in accepting certain provisions in Parts IV and VIII of the text, since it had not, for reasons beyond its control, participated in the relevant negotiations. It would not, however, obstruct the adoption of the convention by raising objections at so late a stage.

53. His delegation wished to express support for the amendments in documents A/CONF.62/L.101, L.102, L.116, L.124 and paragraph 2 of L.125.

54. The amendments presented by the major Western industrialized countries in documents A/CONF.62/L.121 and L.122 were, however, irrational and exorbitant in their demands. The United States in particular had placed a serious obstacle in the path of the Conference by its unrealistic and intransigent claims, and it was a matter for regret that certain other delegations had taken advantage of the impasse created by the actions of the United States to revive some of their former claims, thus introducing a further element of confusion.

55. His delegation fully supported the views expressed by the Chairman of the Group of 77 in his statement at the 169th plenary meeting, and particularly his contention that the major Western industrialized countries must recognize that the fact that the Group had agreed to discuss the question of preparatory investment protection was in itself a substantial concession. The Group had, however, firmly opposed any renegotiation on the fundamental elements of Part XI and related annexes.

56. While his delegation supported the efforts made by the President and the Collegium to achieve consensus, the issues at stake were of such vital importance that the Conference should be prepared to proceed to a vote on the draft convention should those efforts prove unavailing.

57. Mr. MUNTASSER (Libyan Arab Jamahiriya) said that his delegation was a co-sponsor of the amendment in document A/CONF.62/L.117. The amendment reflected a concern to clarify the text and to fill a gap which had been widely commented on at the current session. The proposal was fully compatible with article 2 of the draft convention and in no way infringed the rights of innocent passage as affirmed in

articles 17 and 24. It was a compromise which had received broad support from delegations.

58. He pointed out that in the Russian text of the draft amendment the term "security" had been rendered as "matters relating to security". He trusted that the Russian version would be changed to correspond to the English original.

59. His delegation supported the amendments in document A/CONF.62/L.101, although the resulting text would not fully reflect its views on the status to be accorded to national liberation movements.

60. Similarly, his delegation agreed with the amendments in document A/CONF.62/L.102, L.116 and L.127. It opposed, however, the proposals in document A/CONF.62/L.122 regarding preparatory investment protection: the sponsors of those amendments had gone far beyond the intention they had announced at the outset of the session. His delegation also opposed the amendments in document A/CONF.62/L.121, whose real purpose was to prevent the Conference from adopting the convention and place the blame on the Group of 77, and also to grant a minority of countries exclusive access to the resources of the sea through the conclusion of bilateral arrangements.

61. In general, the aim of presenting such a large number of amendments at such a late stage was to deprive the members of the Group of 77 of what few benefits would accrue to them under the convention by establishing a unified system in which activities would be monopolized by international companies in both the reserved and the non-reserved areas.

62. The Group of 77 had refrained from proposing counteramendments despite the fact that the text of the present draft convention did not fully reflect their views. Such restraint indicated the seriousness of their desire to see the Conference complete its work.

63. The amendments in document A/CONF.62/L.104 were not acceptable to his delegation as they would upset the balance of the draft convention.

64. In conclusion, he urged the sponsors of the various amendments to reconsider their position and accept the consensus text in document A/CONF.62/L.78.¹

65. Mr. DANELIUS (Sweden) recalled that the representative of Switzerland, introducing the amendment in A/CONF.62/L.100, had explained that it was aimed at ensuring a more equitable representation of small and medium-sized industrialized countries in the Council. That proposal accorded well with suggestions made previously by his own delegation. He, too, considered it unfair that countries expected to make very substantial financial contributions to the activities of the Authority would have very little chance, according to the present text of the draft convention, of being represented on the Council. The question was not only one of equity; if the present wording was retained, difficulties might arise when the national parliaments of those States came to consider ratification of the convention.

66. The proposed amendment, if adopted, would not only eliminate a discriminatory element implicit in the present text, but would also make it easier for a number of countries to become parties to the convention.

67. It had been pointed out by one delegation that a larger membership of the Council would affect the possibility of obtaining the required two-thirds or three-fourths majority for certain decisions. In his view, however, increased membership should not upset the balance between different regional groups in the Council. It would be possible, with goodwill and on the basis of consultations with interested delegations, to resolve problems in an equitable manner. His delegation would be fully prepared to participate in such consultations in a constructive spirit.

68. Mr. YANKOV (Bulgaria) said that the memorandum and proposals issued by the Collegium (A/CONF.62/L.93 and L.94) provided evidence to indicate that the Conference had made significant progress in carrying out its programme of work. He shared the understanding expressed by the President in his statement to the 168th meeting of the Conference, on 15 April, that the meetings devoted to the consideration of formal amendments would be conducted in compliance with the programme of work (A/CONF.62/L.116).¹

69. The Conference should do its utmost to avoid the adoption of any amendments which might jeopardize the integrity of the negotiated text (A/CONF.62/L.78) such as those which departed from the fundamental elements of the comprehensive draft convention, and he therefore requested the sponsors of such amendments not to press for a vote on them.

70. The Conference should encourage only amendments which enjoyed widespread and substantial support and offered good prospects of a consensus in accordance with the requirements set out in document A/CONF.62/L.62.³

71. It was essential that negotiations on amendments should be conducive to the achievement of general agreement and should not in any way disrupt or upset the proceedings of the Conference and its programme of work. He therefore supported the appeal made by the Chairman of the Group of 77 and many previous speakers to the effect that delegations should exercise moderation and caution in the consideration of the amendments.

72. His delegation could also have introduced amendments aimed at protecting its legitimate interests, especially with respect to more equitable and rational uses of the seas and their living resources. As it had pointed out in its statement on 31 March 1982 (162nd meeting), Bulgaria was among those geographically disadvantaged States with limited living resources whose national economy was very dependent on fishing and which had made significant investments in distant fisheries. However, since it shared the desire to reach general agreement through mutual accommodation, it had not considered it appropriate to submit formal amendments at the current stage. It was of the view that the existing draft convention was an overall package which reflected a balance of multiple national interests and should therefore be preserved.

73. At the same time, it was firmly convinced that any further concessions to certain States, based on political, technological or other advantages, could be detrimental to the interests of the large majority of States and to the international community as a whole.

74. In that connection, he fully supported the statement made by the Chairman of the Group of 77 on 15 April on matters relating to the régime of the exploitation and exploration of the international sea-bed Area (168th meeting). There should be no substantial changes in that régime, particularly with regard to production policies, the composition of the Council, decision-making, the distribution of powers between the organs of the Authority, the Review Conference and other important aspects. He therefore opposed the amendments in document A/CONF.62/L.121, which not only affected 32 articles but could destroy the very foundations of the convention, particularly its Part XI. He was also opposed to the amendment in document A/CONF.62/L.100, which was intended to thwart the negotiated provisions regarding the composition of the Council and the procedure for decision-making. The amendments in document A/CONF.62/L.104 were similarly unacceptable in that they affected substantive elements.

75. Some proposals, however, did constitute improvements, and should be accepted; in particular, those in documents

A/CONF.62/L.124 and L.125 were worth while in that they made the provisions on non-discrimination more explicit.

76. Freedom of navigation was one of the main pillars of the whole system of maritime law and any attempt to limit it might either directly or indirectly disrupt the global system of maritime navigation. His delegation was therefore opposed to any attempt to revise the provisions of the draft convention concerning innocent passage and hence to the amendments proposed to article 21 in documents A/CONF.62/L.97 and L.117. Taken in conjunction with articles 19 and 22, article 21 provided adequate guarantees for the security of coastal States and represented a significant improvement on the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.⁴ Any attempt to amend article 21 might jeopardize an important package relating to the régime of the territorial sea, a package that had been a pre-condition for agreement on the provisions relating to the exclusive economic zone and other important provisions of the draft convention.

77. His delegation was also opposed to the amendments proposed to articles 39, 42, 221 and 223 in document A/CONF.62/L.109. The amendments to article 230 proposed in document A/CONF.62/L.106, represented a substantial deviation from the provisions of the draft convention in that they were intended to introduce sanctions over and above monetary penalties in cases of pollution of the marine environment.

78. His delegation saw the amendment proposed to article 63 in document A/CONF.62/L.114 as an attempt to extend further the already broad jurisdiction of coastal States with regard to fisheries beyond the exclusive economic zone, an attempt which would reopen the issue of the package on the exclusive economic zone.

79. His delegation could not accept the amendments to articles 76 and 121 proposed in document A/CONF.62/L.126. It could, on the other hand, support the amendment proposed in document A/CONF.62/L.96 which represented an effort to provide greater access to fisheries, especially for land-locked countries.

80. The amendments proposed to article 309, particularly that contained in document A/CONF.62/L.108, touched upon much broader issues than that of reservations and exceptions, for instance, the whole system of delimitation and the legal integrity of a comprehensive convention such as the convention on the law of the sea. Problems of delimitation had always been considered a very important part of the convention, as was demonstrated by the lengthy negotiations on the subject and the fact that agreement had been reached on a set of provisions only on the understanding that they would not be subject to reservations. The provisions of the draft convention not only removed some of the uncertainties characterizing the 1958 Geneva Convention, but were also very flexible and general in order to provide a framework for viable and equitable bilateral arrangements with regard to problems of delimitation between neighbouring States. His delegation could not therefore support attempts to weaken the legal integrity and stability of the draft convention in respect of delimitation. Besides, reservations by some States might inevitably call for subsequent rejection of those reservations by other interested States and there would thus be no legal relationship between those two groups of States with respect to the provisions on which there were reservations. That would affect the legal integrity of the régime established by the draft convention and give no legal advantage to the States that had made reservations. He hoped therefore that the sponsors of the amendments in question would reconsider their position and not press their amendments. It had been argued that States had a legitimate right to make reservations. While he

³ *Ibid.*, vol. X (United Nations publication, Sales No. E.79.V.4).

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

did not dispute that right, it should be noted that States also had a legitimate right to oppose reservations. In the case of very important multilateral instruments such as the United Nations Charter, it had been legal practice not to permit reservations, a practice that should also apply to the draft convention.

81. He agreed with previous speakers that it was far too late to reopen negotiations on the issues regarding which compromise formulae had been generally accepted. In the interests of international peace and co-operation, every effort must be made to preserve the integrity of the negotiated text and to adopt it formally by 30 April.

82. Mr. WISNOEMOERTI (Indonesia) said that he would restrict himself to the amendments which were of most importance to his country. That did not mean that his silence on certain other amendments should be construed as indicating any particular position of his delegation thereon.

83. One of Indonesia's main interests was the production policies governing sea-bed mining, on which its position was consistent with that of the Group of 77, namely that the provisions in document A/CONF.62/L.78 reflected an acceptable compromise that was the result of many years of strenuous negotiations in which the Group had made many major concessions. His delegation noted in that connection that the United States had made a positive statement at the 168th meeting which might enhance the prospects of reaching a consensus on the draft convention in accordance with the time-table of the Conference. The prospects of achieving a consensus would be greater were such a positive gesture reflected in the amendments now before the Conference. Regrettably, the amendments proposed in document A/CONF.62/L.121 did not offer substantially improved prospects in that regard, a case in point being the amendments proposed to the provisions on production policies. The amendment proposed to article 151, paragraph 2 (b) (ii), for instance, would in effect increase sea-bed production to 80 per cent of the growth rate in consumption 10 years after the first five years of commercial production, thereby further limiting the possibility for growth of land-based production. Again, the new paragraph 5 proposed for article 151, which was directly linked to the amendment to draft resolution II proposed in paragraph 6 (b) of document A/CONF.62/L.122, constituted machinery for the automatic award of contracts. The above amendments represented fundamental changes in the consensus text of document A/CONF.62/L.78.

84. His delegation was gratified that some progress had been made with regard to the question of preparatory investment protection. His delegation's position on that question was reflected in the amendments proposed by the Group of 77 (A/CONF.62/L.116).

85. His delegation would continue to contribute to efforts to secure the adoption of the draft convention by consensus by the end of the current session.

86. Mr. AL-WITRI (Iraq) expressed gratification that the amendment proposed by his delegation (A/CONF.62/L.101) regarding participation in the convention by national liberation movements, had been approved by consensus.

87. With regard to the Iraqi amendment regarding freedom of navigation proposed in document A/CONF.62/L.110, he reiterated that his delegation supported the consensus in the Group of 77 that the text of document A/CONF.62/L.78 should be adopted as it stood, since it represented a delicate balance which should not be upset. Since certain delegations had proposed amendments to that text, however, even though it already represented a compromise, particularly with regard to navigation, and since, as a geographically disadvantaged State, Iraq attached great importance to navigation, his delegation had felt compelled to submit its amendment on the subject as a counteramendment. If the need arose, it would

oppose any amendment to the relevant provisions of the draft convention and would call for an amendment of article 123 to secure freedom of navigation on semi-enclosed seas. The nature of semi-enclosed seas and the fact that they contained numerous islets, were bordered on by many coastal States and were open to considerable international navigation made it essential that navigation there should be unimpeded. It was in the interest of all States bordering on such seas to co-operate to preserve freedom of navigation on them. In that connection, his delegation was particularly opposed to the amendments in documents A/CONF.62/L.97, L.109 and L.117. It was none the less still prepared not to press its own amendment.

88. His delegation was opposed to any amendment of article 309, which provided that there should be no reservations to the convention. The article was needed to maintain the principle of the package deal.

89. Miss BERBERI (Sudan) said that, as a member of the group of African States and the Group of 77, her delegation subscribed fully to the statements made by the Chairman of the Group of 77 at the 169th meeting and the Chairman of the group of African States at the current meeting.

90. She would not comment on the draft amendments relating to Part XI and related annexes and would confine her statement to amendments of special interest to her country.

91. Her delegation supported the amendments in document A/CONF.62/L.116 and the draft resolution (A/CONF.62/L.127) proposed by Peru on behalf of the Group of 77.

92. Earlier in the session, the head of her delegation had expressed her Government's particular concern regarding article 21 and had even endorsed the amendment based on the authorization and notification approach. Together with a number of other delegations, however, her delegation had decided to sponsor the amendment in document A/CONF.62/L.117 on the understanding that it would ensure that a compromise was reached. It also sympathized with the amendments proposed in document A/CONF.62/L.97.

93. Although her delegation had always advocated full participation in the convention by national liberation movements, it had been prepared to support the amendment proposed in document A/CONF.62/L.101 as a compromise. It endorsed fully the amendment proposed in document A/CONF.62/L.102, which was designed to ensure full participation in the convention by the United Nations Council for Namibia.

94. Her delegation also supported the amendments proposed in documents A/CONF.62/L.103 and L.115.

95. Mr. PINTO (Portugal) observed that there was every reason to hope that the draft convention would be finalized by 30 April.

96. Except for certain specific questions, the draft convention, resolutions and decision contained in documents A/CONF.62/L.78, L.93 and L.94 constituted a substantive and balanced whole on which the Conference should be able to agree. His delegation had refrained from submitting certain amendments which it considered justified because they had not enjoyed sufficient support, but that did not alter its conviction that the questions to which they related should still be given thorough consideration.

97. While sympathizing with the concerns of the sponsors of the amendments proposed to article 21, his delegation believed that that article could not be interpreted in a vacuum but must be considered in the context of other articles, in particular article 19, in conjunction with which it represented considerable progress over the corresponding provisions of the 1958 Geneva Convention. Article 21 in fact introduced considerable guarantees for coastal States. Given that fact and also the realities of international political life, his delegation believed that articles 19 and 21 should remain as they were. It

also believed that articles 62, 69, 70 and 71 represented an acceptable compromise and should not be amended.

98. With regard to the amendment proposed in document A/CONF.62/L.114, his delegation believed that the protection of fish stocks and stocks of related species occurring both within the exclusive economic zone and in an area beyond and adjacent to it did not pose any major threat to the interests involved.

99. His delegation reiterated its support for the United Kingdom proposal (A/CONF.62/L.126) that article 121, paragraph 3, should be deleted. It would not be sound international legal practice to subject different parts of the same territory to different legal régimes, especially if they were under the same sovereignty. For the same reason, it was opposed to the amendment proposed in document A/CONF.62/L.118.

100. His delegation could not accept the reservations proposed to articles 15, 74, 83 and 121, paragraph 3, in document A/CONF.62/L.108, for they related to extremely important issues which called for universal solutions incompatible with such reservations. Although his delegation endorsed the principle that States had the right to express reservations to an international convention, in view of the nature of the reservations and exceptions provided for in the draft convention and the fact that the draft convention represented a package deal, it could accept article 309 in its present form, provided that no changes were made in the reservations and exceptions currently authorized by the draft convention.

101. He welcomed the fact that the amendment proposed by Belgium (A/CONF.62/L.119) on behalf of the European Economic Community had received considerable support.

102. He supported the proposals to revise article 161 and its provisions on the composition of the Council, in particular the amendment proposed in document A/CONF.62/L.103.

103. His delegation had always advocated protection of the legal interests of those who were to work in the international Area and therefore strongly supported the amendment proposed by the United States whereby the convention must establish social protection machinery for that purpose. By not leaving the Enterprise, as future employer, free to determine its own labour standards, the Conference would gain prestige in the eyes of all those who would have to work in the Area in coming years.

104. His delegation was aware that, at present, only half a dozen countries had the financial and technological capability to exploit the resources of the sea-bed. The convention must, however, contain provisions whereby most States would have access to those resources in the future. His delegation therefore supported the amendments to articles 6 and 7 of annex III proposed by France (A/CONF.62/L.106) which were designed to ensure that States which might in future have the necessary financial and technological capability would be able to obtain mining sites in the Area.

105. Mr. RASOLONDRAIBE (Madagascar) observed that, while his delegation did not find the draft convention entirely

satisfactory, it had not proposed amendments because the text was the result of considerable work and numerous concessions. It continued to believe that the ideal way to adopt the convention was by consensus but, since that consensus had yet to be achieved, it could support a number of the amendments before the Conference.

106. Thus, his delegation supported the amendment proposed in document A/CONF.62/L.101, which made a useful contribution to the draft convention. With regard to matters assigned to the Second and Third Committees, it believed that the results achieved by those Committees at earlier sessions must be protected and that any change in what was already a generally accepted text must be avoided. It none the less welcomed the amendment proposed to article 63 in document A/CONF.62/L.114, since it helped to clarify that article. With a view to ensuring safety of navigation, it also fully supported the amendment to article 60, paragraph 3, proposed by France (A/CONF.62/L.106). At the same time, it could not support the amendments proposed in document A/CONF.62/L.97 and L.117, because they altered the substance of article 21. Nor could it endorse the amendments proposed in documents A/CONF.62/L.99, L.107 and L.115.

107. With regard to the amendments proposed to articles assigned to the First Committee, his delegation continued to support the position of the Group of 77 and, in particular, the inclusion of a special provision in annex III, article 7, as proposed in document A/CONF.62/L.124. It could not support the amendments proposed to articles 309 and 310, for it believed that there should not be reservations to the convention. With regard to the amendments proposed to Part XI and related annexes, his delegation reiterated the position of the Group of 77 that the package deal (A/CONF.62/L.78) should not be altered, although it was receptive to proposals which would improve it without changing its substance.

108. Mr. WOLF (Austria) explained that the amendment in document A/CONF.62/L.103 was designed to ensure that not only coastal States but also land-locked and geographically disadvantaged States were represented in the Council in proportion to their representation in the Assembly. The amendment had been proposed at the request of the land-locked and geographically disadvantaged States and with the agreement of the coastal States, when the parallel between subparagraphs (a) and (b) of article 161, paragraph 2, had been upset by the introduction in subparagraph (b) of the phrase "which do not qualify under paragraph 1 (a), (b), (c) and (d)". Unless the same amendment was introduced in subparagraph (a) there would be discrimination against land-locked and disadvantaged States and that would defeat the object of article 161, paragraph 2, which was designed to ensure a reasonable balance between coastal States and land-locked and geographically disadvantaged States.

109. His delegation had always supported the establishment of the Common Heritage Fund and therefore agreed to the amendment proposed in document A/CONF.62/L.115.

The meeting rose at 6.15 p.m.