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## **172<sup>nd</sup> Plenary meeting**

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## 172nd meeting

Friday, 16 April 1982, at 8.40 p.m.

President: Mr. A. MAHIOU (Algeria)

### 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. JESUS (Cape Verde) said that innocent passage of warships through the territorial sea was a matter of great concern to many delegations, about 80 of which had asked for or supported the improvement of the articles on the subject. The right of innocent passage of foreign warships through the territorial sea could not be exercised without taking due account of the legitimate interests of the coastal State concerned in ensuring that the passage would not endanger its security, in accordance with article 19, which stated that passage was innocent as long as it was not prejudicial to the peace, good order or security of the coastal State. His country considered that it had full sovereignty over its territorial sea and archipelagic waters and that the interests of other countries were subject to that sovereignty. It could not, therefore, accept indiscriminately the exercise of the right of innocent passage of foreign warships through its territorial sea. Even though his delegation interpreted the current wording of article 21, in conjunction with article 19, as recognizing the right of the coastal State to enact laws and regulations in order to preserve its security, it felt that that point must be clarified in order to avoid any doubt in future interpretation. It had accordingly co-sponsored the amendment proposed in document A/CONF.62/L.117, which represented the minimum of its original position and took into consideration the position of other delegations.

2. The amendment to article 63 proposed in document A/CONF.62/L.114 and Corr.1 was a good one and did not endanger the balance of the text. He hoped there would be no difficulty in accepting it. On the other hand, he considered that the proposal concerning article 309 in document A/CONF.62/L.108 and Corr.1 was highly prejudicial to the balance of the convention. His delegation strongly opposed it for two reasons. First, it believed that the wording of articles 74 and 83 was the best compromise yet attended and, since it considered the question of delimitation definitively settled, it could not accept any reservations to the articles concerned. Secondly, his delegation could not accept any reservation to the convention, since that would disrupt both the "package" concept on which it had been negotiated and the unity and linkage of articles and would endanger the equilibrium achieved. There was no conflict between that position and international law, since article 19 (a) of the Vienna Convention on the Law of Treaties<sup>1</sup> provided that a State might formulate reservations unless the reservation was prohibited by the treaty.

3. His delegation considered that the amendment to article 60, paragraph 3, submitted by France in document A/CONF.62/L.106 was a good one and it therefore supported it.

4. Mr. KANG SOK RYONG (Democratic People's Republic of Korea) said that the passage of foreign warships through the territorial sea was an important issue affecting the security of the coastal States, which therefore had the legitimate right

to adopt laws and regulations regarding such passage in order to guarantee their security. That was why his delegation had joined the sponsors of the proposal contained in A/CONF.62/L.117, which made it clear that a coastal State could adopt laws and regulations on the passage of foreign warships through its territorial sea in order to prevent an infringement of its security. He pointed out that 30 States had already joined the sponsors of the proposal and that the majority of the participants in the Conference supported it. He felt strongly that a consensus should be reached on the proposal, and he reiterated his delegation's position that no foreign warship could, at present or in the future, pass through his country's territorial sea without guaranteeing the full sovereignty and security of his country.

5. He reaffirmed his delegation's support for the proposals of the Group of 77 contained in documents A/CONF.62/L.116 and L.127 and said he hoped that the amendment to article 62, paragraph 3, proposed by Romania and Yugoslavia in document A/CONF.62/L.112 would be fully considered.

6. In conclusion, he hoped that the Western countries, particularly the United States, would take a realistic position so that a comprehensive convention on the Law of the Sea could be adopted at the current session and signed by all States at Caracas in September.

7. Mr. BEESLEY (Canada) said that, in the interest of reaching a consensus on the Convention, his delegation, together with 10 others, had submitted the amendments contained in document A/CONF.62/L.104. He recalled that those proposals did not reflect the maximum position of the delegations concerned but had initially been submitted by the heads of delegations in their personal capacity in an attempt to provide a basis for negotiations and in the belief that that would help to bridge the wide gap between the positions of various delegations, in particular those of the industrialized countries and the Group of 77. The document addressed the concerns expressed by the President of the United States in January 1982, while at the same time preserving the delicate balance of interests resulting from the many years of negotiations. After careful consideration, the authors of the compromise proposals had decided to introduce them in the form of amendments, solely because of their conviction that those amendments, if accepted, could play a useful role in achieving consensus. They were very conscious of the fact that all the amendments represented a further concession from the Group of 77 and that such concessions were unilateral, in that there was no *quid pro quo* except the possibility of achieving a universally recognized Convention. He therefore urged the sponsors of the amendments in documents A/CONF.62/L.121 and L.122 to reflect on their own fundamental and far-reaching proposals.

8. His delegation had noted with some concern the proposed amendments to article 151. Those amendments could further reduce the already deficient protection afforded to land-based producers by that article and could affect it to such an extent as to render it meaningless. They were more damaging than deletion of the article would be as the floor would be cited as a virtual investigation to produce regardless of market conditions and there would be no ceiling to prevent the disruption of markets. His Government would feel less apprehensive if the group of States attempting to truncate the nickel production ceiling had been willing to accept a provision forbidding subsidization and other unfair practices. Unfortunately, those

<sup>1</sup> See *Official Records of the Third United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

who proposed to destroy the only safeguard in the convention for the Enterprise, for the land-based producers; and indeed for the common heritage itself were the ones who had consistently rejected any restrictions of their own practices. He urged the countries concerned to rethink the consequences of such a policy.

9. It was for those reasons that his delegation, together with the Australian delegation, had sponsored the proposal in document A/CONF.62/L.98, which would make applicable to minerals derived from the sea-bed the widely accepted principles and the rights and obligations already contained in relevant multilateral trade agreements. It would provide more certainty and security to the international trade interests of all concerned. He hoped that States which were already parties to the General Agreement on Tariffs and Trade (GATT) framework would see that the benefits derived from the provision would be no less substantive and the obligations no more onerous than those provided in such agreements. As for those that were not parties to GATT, the amendment provided that recourse to the dispute settlement mechanism of such agreements could not be made without their consent. He hoped that all delegations which had previously resisted such provisions would review their positions and join in introducing the unfair economic practices clause into the convention.

10. His delegation supported the amendment to article 138 in document A/CONF.62/L.121. It was very important that those working in the Area, both for the Enterprise and for mining companies, should do so in safe conditions and be covered by the relevant International Labour Organisation Conventions and Recommendations and the safety standards established by the Inter-Governmental Maritime Consultative Organization.

11. With regard to the amendment to article 63, paragraph 3, contained in document A/CONF.62/L.114, of which his delegation was a sponsor, he drew attention to the importance of conserving stocks of fish which straddled the 200-mile limit of the exclusive economic zone and the absolute necessity for the coastal State and the countries of the fishing fleets just beyond the 200 miles to co-operate in order to adopt such measures for their respective nationals as might be necessary for the conservation of those stocks. There had been a number of cases, including one that affected his country seriously, of distant-water fishing fleets which lurked just outside the 200-mile limit and overfished without restraint in the area beyond national jurisdiction. No one suggested that the coastal State should have jurisdiction beyond 200 miles, but it was reasonable to demand that all States should impose acceptable conservation measures on their own fishing fleets wherever they might be. It was abuse of the freedom of the high seas that had originally led to the adoption of the 200-mile exclusive economic zone, and it was the same States that were now resisting a proposal intended to lay the basis for co-operative conservation measures. He must say with the greatest solemnity that such action endangered the fishing rights now enjoyed by the States within the economic zone of coastal States.

12. He stressed that the amendment to article 161 proposed by his delegation (A/CONF.62/L.113) to ensure representation on the Council of the State which contributed most of the funds to be disbursed by the Authority for the common heritage in no way affected the very delicate balance achieved with regard to the composition of the Council. The number of seats would remain unchanged, as would the composition of the various interest groups defined in article 161, paragraph 1. The proposal would simply ensure that the major contributor was elected from within one of those groups and provide an element of equity which might have been overlooked in the past. It was, of course, obvious which State would benefit from that provision for many years to come, but the advantage of the proposed amendment was that if another State

became the major contributor it would be assured of a seat on the Council. There were a number of States, including his own, which might one day qualify under that provision and, indeed, it would not be a bad thing to have States competing with each other to become major contributor to the common heritage of mankind.

13. With regard to the amendments proposed to certain key navigational provisions, in particular article 21, he stressed that the entire convention would be threatened if the delicate balance achieved on those provisions were to undergo a substantive change. The protection of freedom of navigation could only be ensured by a universally accepted convention. It was a very dangerous fallacy for anyone to think that they could pick and choose among the fundamental principles of the draft convention, accepting those they liked and asserting them as principles of customary international law while rejecting some they did not like as proposals for a convention binding only on the parties to it. The aim of the convention was to lay down binding principles of international law, and those outside the convention would not only lose the right to mine the sea-bed but also the freedom of navigation which they had insisted upon from the outset as part of the trade-off on which the convention was based.

14. In conclusion, he stressed that, the larger the number of pioneer investors recognized, the fewer would be the mine sites available for others, including the Enterprise. The growing number of those claiming the status of pioneer investors was producing an alarming situation, and he felt that the only safeguard for the common heritage would be the very nickel production ceiling which was being attacked by the same people.

15. Mr. PERIŠIĆ (Yugoslavia) said that the sponsors of the amendment to article 62, paragraph 3, contained in document A/CONF.62/L.112 believed that the requirements of all developing States, irrespective of their geographical situation, were a relevant factor which should be taken into account in addition to those of "developing States in the subregion or region". At the same time, he stressed that the amendments did not encroach on the existing priority of the requirements of developing States in the subregion or region.

16. He wished to reiterate the position of his Government in support of the position of the Group of 77 with respect to Part XI and the relevant annexes of the draft convention in document A/CONF.62/L.78<sup>2</sup> and in regard to the draft resolutions and the draft decision in documents A/CONF.62/L.93 and Corr.1 and A/CONF.62/L.94 as amended by the Group of 77 in document A/CONF.62/L.116. The Group of 77 had always been willing to search for agreement and had made many concessions to that end, including the acceptance of preparatory investment protection. Such aspects of the draft convention as production ceilings, transfer of technology, composition of and decision-making in the Council, the Review Conference, separation of powers in the Authority, general resource policy in the Area and the status of the Enterprise could not be renegotiated. Consequently, his delegation would not comment on the amendments to the provisions of Part XI and the relevant annexes, which had not been considered by the Group of 77.

17. Where other amendments were concerned, he supported the amendments to article 63 in document A/CONF.62/L.114 and Corr.1, that submitted by the United Nations Council for Namibia to article 305 in document A/CONF.62/L.102, that submitted by Iraq to the draft decision of the Conference in document A/CONF.62/L.101 and that submitted by Greece to article 19, paragraph 2 (d), in document A/CONF.62/L.123. He considered that the French amendment to

<sup>2</sup> See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XV (United Nations publication, Sales No. E.83.V.4).

article 60, paragraph 3, in document A/CONF.62/L.106 contained useful guidance for future international standards to be established by the competent international organization with respect to abandoned installations or structures, as envisaged in the United Kingdom suggestion for that paragraph which had already been adopted and which his delegation had supported.

18. He did not support the amendments to article 309 submitted in documents A/CONF.62/L.108 and L.120. The convention, as a comprehensive universal legal instrument based on general agreement, represented a balanced legal text that should not be impaired by reservations. The provisions on delimitation were the result of long negotiations for reaching a common denominator acceptable to all participants. For the same reason, he could not support the amendments proposed in document A/CONF.62/L.126.

19. Although his delegation had been in favour of the proposal for the establishment of a Common Heritage Fund, it could not support the amendment to article 56 contained in document A/CONF.62/L.115, since it was opposed to any changes in the provisions of that article on the exclusive economic zone. With regard to the amendments to article 124 proposed in document A/CONF.62/L.99, his delegation considered that the present text of the article should be retained. Lastly, his delegation could not support the deletion of article 4, paragraph 6, of annex IX dealing with the participation of international organizations, as proposed by Belgium on behalf of the European Economic Community in document A/CONF.62/L.119.

20. Mr. CHARRY SAMPER (Colombia) commended the President for his efforts to consolidate the consensus. It had been generally agreed that changes to the text of the draft convention could be made only by consensus.

21. The Group of 77 had tried to ensure that negotiations on items still pending at the start of the current session helped to iron out the remaining difficulties, due regard being paid to the common imperatives reflected in the draft convention and to the need for a legally acceptable, functional and realistic text that would serve the interests of all countries, especially the developing countries. Colombia supported the amendments submitted on behalf of the Group of 77 in document A/CONF.62/L.116.

22. His delegation opposed the amendments contained in documents A/CONF.62/L.108 and Corr.1, L.111, L.120 and L.126. The third preambular paragraph of the draft convention stated that the problems of ocean space were closely interrelated and needed to be considered as a whole. That principle reflected the philosophy of the draft convention. Individual provisions could not be isolated from the entire corpus of provisions. Provisions regarding such matters as the settlement of disputes could not be considered to be of a bilateral nature. All aspects of the draft convention were interrelated and were part of the package deal. Article 309 developed the principle enunciated in the third preambular paragraph and afforded a guarantee of the untouchability of the convention. All the problems of ocean space must be considered as a whole, and if reservations were permitted that whole would collapse. There would be a collection of conventions, instead of a unified legal order for the seas and the oceans. There would be a risk of legislative anarchy.

23. There was another reason why his delegation opposed the deletion of article 309. One of the objectives of the convention, according to the seventh preambular paragraph, was the codification and progressive development of the law of the sea. The predominant school of thought on international law still held that reservations to conventions aimed at codifying the law were unacceptable because they would thwart the very purpose of codification, namely, the creation of a general legal régime.

24. Allowing reservations to some articles and prohibiting them in the case of others would mean sanctioning an excessive privilege. All States had made sacrifices and concessions in the interests of consensus. The draft convention was the result of reciprocal and interrelated concessions and did not, therefore, allow for reservations of a purely bilateral nature. It would be contrary to the principle of equality of States if some countries could draw up a list of articles to which reservations could be made while others, constituting the overwhelming majority, were unable to formulate reservations on various substantive issues.

25. The deletion of article 309 or the selection of a few key articles for possible reservations would create uncertainty in the legal régime to which States would be subject with regard to reservations. The amendment proposed in document A/CONF.62/L.108 and Corr.1 made no mention of procedures for accepting, objecting to or withdrawing reservations. Without such procedures, the balance between States would be upset.

26. The draft convention had been conceived and negotiated on the assumption that there would not be reservations. By adopting article 309, States which might be willing to allow reservations in the case of other treaties would be expressing their willingness to uphold the integrity and the purpose of the convention.

27. His delegation was opposed to the amendment in document A/CONF.62/L.111 because it also detracted from article 309 and would create confusion between reservations and statements which did not purport to exclude or to modify the legal effect of the provisions of the convention in their application to the State party concerned. Articles 309 and 310 should not be touched; any change would affect the convention as a whole.

28. Reservations to articles 15, 74, 83 and 121, paragraph 3, could not be permitted. According to the preamble to the draft convention, the area of the sea-bed and ocean floor which constituted the common heritage of mankind lay beyond the limits of national jurisdiction. Under the draft convention, the delimitation of national jurisdiction was not a purely bilateral question. Ultimately, the area constituting the common heritage would be defined after delimitation of the areas referred to in articles 15, 74, 83 and 121 and of the outer edge of the continental margin referred to in article 76.

29. Colombia was opposed to the amendments concerning article 121 proposed in documents A/CONF.62/L.108 and Corr.1 and L.126 because that article reflected a unique and delicate balance and would help to preserve the common heritage in the oceans. A simple look at the map of the Pacific Ocean would show what could result from the deletion of article 121, paragraph 3, or from reservations in respect of that paragraph.

30. Having refrained from submitting any amendments, his delegation now found that there was a proposal to allow reservations in respect of articles 74 and 83 as a whole (A/CONF.62/L.108 and Corr.1). In both those articles, paragraph 2 stated that, if no agreement could be reached within a reasonable period of time, the States concerned should resort to the procedures provided for in Part XV. The adoption of the Venezuelan amendment would enable States to evade the settlement procedure. Part XV should not be subject to reservations.

31. Colombia found it difficult to accept reservations in respect of article 74, paragraph 1, and article 83, paragraph 1. The question was whether the international community could accept a reservation to the provision that the delimitation of the exclusive economic zone and of the continental shelf should be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice. Furthermore, it would be inadmissible

if, by reason of reservations to article 74, paragraph 3, and article 83, paragraph 3, States felt that they were not obliged to refrain from jeopardizing or hampering the reaching of the final agreement.

32. Reservations to article 15 could allow States to extend their territorial sea without limitation. That could have serious implications for enclosed or semi-enclosed seas in various regions.

33. The provisions contained in articles 15, 74, 83 and 121, paragraph 3, and in Part XV, were not matters of bilateral concern; they were the key elements of a system built up over eight years of negotiation. Allowing reservations to those articles, deleting article 309 or article 121, paragraph 3, or amending article 310 would be incompatible with the convention. The text contained in document A/CONF.62/L.78 should be maintained, subject to the incorporation of material reflecting the consensus reached on points that had been outstanding at the start of the current session and such generally acceptable amendments as would improve the text and bring the work of the Conference to a successful conclusion.

34. Mr. MOMTAZ (Iran) noted that several of the amendments related to the crucial question of navigation in the territorial sea, which formed an integral part of the territory of the coastal State. Under international law, the coastal State had a responsibility to preserve the legitimate interests of international navigation in its territorial sea. However, that should not be to the detriment of the interests and security of the coastal State. Accordingly, Iran had always insisted on prior authorization for the passage of warships through its territorial sea. It supported the amendment to article 21 proposed by Gabon (A/CONF.62/L.97).

35. His delegation was one of the sponsors of the amendment contained in document A/CONF.62/L.117. The object was to give due weight to the security of the coastal State and to afford it the means of preventing attacks on its security or independence. Inasmuch as the territorial sea was part of the sovereign territory of the coastal State, there could hardly be objections to measures by the coastal State in the territorial sea which were intended to protect that State's security.

36. The same was true of measures adopted by the coastal State in straits used for international navigation. His delegation supported the amendments proposed by Spain in document A/CONF.62/L.109. Iran recognized the importance of such straits for international trade and navigation and accepted the constraints imposed on the coastal State. It believed, however, that the constraints accepted in the interests of the international community should not be allowed to jeopardize the coastal State's security. Passage through the straits must be innocent, in the true sense of the term. Iran would guarantee passage only to vessels that did not pose a threat to its security. It could not give an unconditional guarantee of freedom of navigation, notwithstanding the fact that some straits used for international navigation led to enclosed or semi-enclosed seas. His delegation therefore opposed the amendment contained in document A/CONF.62/L.110, which negated the principle of sovereignty of the coastal State over its territorial sea.

37. The amendment relating to the régime for the exploitation of the living resources of the exclusive economic zone in document A/CONF.62/L.99 was unacceptable to his delegation, since it called in question the sovereign rights of the coastal State with regard to the exploitation of its fishery resources. In that connection, his delegation supported the views expressed by the representative of Peru. The only obligations of the coastal State which Iran accepted related to the part of the allowable catch which the coastal State could not harvest and which only the land-locked and geographically disadvantaged States of the same region or subregion would be able to harvest.

38. His delegation was opposed to any attempt to modify the well-established definition of the term "island" in international law. Any attempt to make legal distinctions on the basis of size and population would only give rise to problems later. Iran therefore supported the United Kingdom proposal in document A/CONF.62/L.126 to delete article 121, paragraph 3.

39. Iran rejected all amendments that called in question article 309.

40. His delegation endorsed the amendments contained in documents A/CONF.62/L.101 and L.102. With regard to preparatory investments, it fully supported the amendments submitted by Peru on behalf of the Group of 77 (A/CONF.62/L.116).

41. As far as the exploration and exploitation of the common heritage of mankind was concerned, it seemed that the United States of America was persisting in its negative attitude and was again submitting proposals which failed to take account of the basic principles formulated by the Conference. His delegation rejected those proposals, which dealt with matters that were not negotiable. While the arrogant and selfish attitude of the United States was hardly surprising, his delegation was disappointed at the position taken by certain industrialized countries of Western Europe. Although they could have exerted a moderating influence, they had simply espoused the extremist policy of the United States. Consolidating the position of a super-Power would not promote the interests of the Conference. The line was well drawn between the developing countries, struggling to end centuries of humiliation and exploitation, and the developed countries, seeking to continue their shameless plunder of the resources of mankind and to consolidate their hegemony. Now the latter countries were threatening not to sign the convention. Such an attitude seriously endangered the ultimate objectives of the Conference and the entire process of establishing a new international economic order.

42. Mr. BENÍTEZ SAENZ (Uruguay) said that, although he would not be commenting on some of the amendments submitted, silence did not necessarily signify consent.

43. Several of the articles of the draft convention were not satisfactory to his delegation. However, in a spirit of compromise it had refrained, as far as possible, from submitting amendments and had simply co-sponsored the amendment to article 21 contained in document A/CONF.62/L.117. Uruguay believed that that amendment would help the process of negotiation and could usefully be considered by the Collegium.

44. The amendments submitted by Peru on behalf of the Group of 77 represented a final offer. No further concessions could be made. His delegation appealed to the industrialized countries not to insist on their proposals concerning matters that had already been finally negotiated, such as production ceilings, transfer of technology, the composition of the Council, the Review Conference, the powers and functions of the Assembly, resources policy, and the Enterprise and its powers.

45. Reasonable proposals, such as those relating to the protection of preparatory investments, afforded a sound basis for negotiations. They were acceptable to his delegation and to many others. Amendments such as the one contained in document A/CONF.62/L.117 would not upset the balance achieved by the Conference on basic issues.

46. On the other hand, his delegation found unacceptable the amendments contained in documents A/CONF.62/L.96, L.99, L.107, L.112, L.115, L.118, L.120 and L.126. They sought to introduce changes regarding points on which no further concessions were possible. There were legal and technical reasons why his delegation could not accept alternatives to the current texts of articles 56, 62, 69, 70, 71 and 309. Should there be an attempt to amend those articles, his delegation would be obliged to request a vote.

47. Miss CABRERA (Mexico) said that, apart from the proposals submitted by the Group of 77 as a whole, her delegation had not sponsored any amendments. That was not because Mexico was fully satisfied with the draft convention but because it believed that, after so much effort and so many mutual concessions on all parts of the text, the consensus achieved should be respected by everyone.

48. Her delegation understood that some delegations still had difficulties with some provisions of the draft convention. A few of the amendments submitted, such as those contained in documents A/CONF.62/L.101 and L.102 and the second, third and fourth amendments of document A/CONF.62/L.109, had a good chance of obtaining general agreement. However, in the case of most of the others, it would be difficult to achieve agreement where negotiation had failed. Her delegation therefore appealed to delegations to withdraw amendments which lacked general support.

49. The President was to be commended for his efforts to see whether the prospects for consensus could be improved with regard to certain amendments. However, before any amendments were adopted as a result of those consultations, there would have to be an objective and explicit demonstration of the existence of a genuine consensus.

50. As a member of the Group of 77, Mexico had joined in submitting the amendments contained in document A/CONF.62/L.116. As the President had indicated, the first and second amendments were generally acceptable. Draft resolution II, to which the other amendments related, had not received the required support. Her delegation hoped that the outcome of the consultations regarding the various amendments to that draft resolution would be satisfactory to all the parties concerned and that, there again, the acceptability of the amendments adopted would be evidenced by an objective and explicit demonstration of the existence of a consensus.

51. With regard to Part XI of the draft convention, her delegation wished to reaffirm that any attempt to change substantively the basic elements of the sea-bed régime, as was proposed in the amendments contained in document A/CONF.62/L.121, would fail. Mexico appealed to the sponsors of those amendments to be realistic and withdraw them, in view of the tremendous concession which draft resolution II represented.

52. Amendments to a number of articles had been submitted by Romania (A/CONF.62/L.96), Lesotho (A/CONF.62/L.99 and L.115), Zaire (A/CONF.62/L.107) and Romania and Yugoslavia (A/CONF.62/L.112). Negotiations between the group of coastal States and the group of land-locked and geographically disadvantaged States regarding the matters dealt with in those amendments had shown that it was simply impossible to reach agreement on them or to change in any way the existing balance in the articles in question. Her delegation hoped that the sponsors would examine the situation realistically, withdraw their amendments and follow the responsible lead of the negotiating groups, which had not submitted any amendments to those articles.

53. Mr. LUCIO PAREDES (Ecuador) said that his delegation's position regarding the adoption of the convention by consensus was reflected in his letter of 13 April 1982 to the President of the Conference reproduced in document A/CONF.62/L.128.

54. In keeping with the traditional position maintained by Ecuador throughout the negotiations of upholding the rights of the coastal State over its maritime space up to 200 miles from the coast and over its continental shelf, his delegation believed that the following amendments would be useful in producing a clearer and more precise text: the amendment to article 21 proposed by Gabon (A/CONF.62/L.97), the amendment proposed by the United Nations Council for

Namibia (A/CONF.62/L.102), the amendments proposed by Australia and other States (A/CONF.62/L.114), the amendment proposed by Algeria and other States (A/CONF.62/L.117) and the United Kingdom proposal to delete article 121, paragraph 3 (A/CONF.62/L.126). There was a link between the amendments proposed in documents A/CONF.62/L.97 and L.117; should the former fail to receive sufficient support, the latter could constitute a compromise.

55. His delegation could not accept those amendments which would affect the delicate balance and negate the purpose of the long process of negotiations. They included the amendment submitted by Romania (A/CONF.62/L.96), the amendments submitted by Lesotho (A/CONF.62/L.99 and L.115), the amendments submitted by Zaire (A/CONF.62/L.107), the amendment submitted by Romania and Yugoslavia (A/CONF.62/L.112), the amendment submitted by Romania (A/CONF.62/L.118) and the amendment to article 19 proposed by Greece (A/CONF.62/L.123).

56. With respect to the amendment submitted by Venezuela (A/CONF.62/L.108 and Corr.1), his delegation had consistently maintained that States should be entitled to formulate reservations. The Venezuelan proposal would therefore be acceptable to his delegation if only it did not limit the right to formulate reservations, since there were other provisions of the convention to which reservations should be allowed. Accordingly, his delegation supported the proposal to delete article 309 (A/CONF.62/L.120).

57. His delegation could not support the Romanian proposal contained in document A/CONF.62/L.111, but it would be able to support a proposal for the deletion of the last part of article 310, beginning with the words "provided that". It endorsed the Iraqi proposal in document A/CONF.62/L.101 concerning the draft decision of the Conference on the participation of national liberation movements.

58. Ecuador wished to reiterate its solidarity with the Group of 77; it supported the proposals submitted by the Chairman of the Group (A/CONF.62/L.116) concerning article 171, draft resolution I and draft resolution II. It was essential to resist the continuing efforts to erode even further the rights of the developing countries. Ecuador supported the principle that the sea-bed and ocean floor beyond the limits of national jurisdiction were the common heritage of mankind, a principle to which no State had objected.

59. He had referred only to matters of special concern to his delegation. His silence on other matters did not necessarily signify support for the amendments in question.

60. Mr. TJIRIANGE (United Nations Council for Namibia) said it was the understanding of the United Nations Council for Namibia that the term "all States" in article 305, paragraph 1 (a) in annex I of document A/CONF.62/L.93, included Namibia, represented by the Council. Nevertheless, in order to avoid ambiguity, the Council had submitted the amendment contained in document A/CONF.62/L.102, which it hoped would be supported by all delegations.

61. Mr. AL-HADDAD (Bahrain) said that the purpose of the amendment to article 21 contained in document A/CONF.62/L.117, of which Bahrain was a sponsor, was to arrive at a compromise formula which protected the rights of all States without infringing the rights of coastal States.

62. His delegation supported the amendments proposed in Iraq in document A/CONF.62/L.101 and endorsed the statement made by the Chairman of the Group of 77 with regard to Part XI (169th meeting).

63. Mr. KOCHUBEY (Ukrainian Soviet Socialist Republic) said it was unfortunate that a number of delegations had not heeded appeals to refrain from proposing amendments to the

draft convention. The amendments submitted would, if adopted, disturb the existing balance and destroy the package of agreements. That was particularly true of the proposals contained in documents A/CONF.62/L.97 and A/CONF.62/L.117, which were designed to give coastal States the unlimited right to establish a régime governing the passage of ships along traditional routes of international navigation which crossed part of their territorial waters. The amendment in document A/CONF.62/L.117 could be abused by States claiming an alleged threat to their security. To protect their security, coastal States would even be able to prevent the passage of foreign merchant vessels. He stressed that article 21 in its present form was an integral part of the compromise on the entire régime governing territorial waters. That compromise represented the optimal balance between the interests of international navigation and the security interests of coastal States. No amendment was necessary, since articles 18 to 21 together with articles 29 to 32, which established rules applicable to warships, created the necessary system of guarantees for the security and other interests of coastal States.

64. The amendment to article 63 proposed in document A/CONF.62/L.114 would preclude the use of arbitration in settling certain disputes and would not promote the conservation and more rational use of stocks. He appealed to the sponsors of amendments to articles 21 and 63 to withdraw them.

65. His delegation was firmly opposed to the amendments in documents A/CONF.62/L.100, L.104 (with regard to article 161, paragraph 7 (c)), L.106 (with regard to article 230), L.107, L.109 and L.118. He joined other speakers in urging the delegations of Venezuela and Turkey to withdraw their amendments to article 309, since permitting reservations or exceptions would be contrary to the spirit and letter of the draft convention and would undermine the entire package.

66. His delegation fully supported the position of the Soviet Union and other socialist countries on amendments to Part XI of the draft convention, particularly the anti-monopoly provisions and those relating to the Preparatory Commission and the protection of preparatory investments. It supported the amendments proposed in documents A/CONF.62/L.101, L.102, L.124 and L.125. The United Nations Council for Namibia and the national liberation movements recognized by the United Nations should be given due recognition at the Conference.

67. Mr. JITOKO (Fiji) expressed concern at the number of amendments proposed to the compromise text contained in document A/CONF.62/L.78. In view of the close interlinkage of many of the provisions of the text, a change in one would in many instances mean a change in others. His delegation was prepared to accept the text of document A/CONF.62/L.78 as a package, subject to refinements such as that contained in document A/CONF.62/L.114 and Corr.1, which in its view did not detract from the substance of the compromise text. It could also support such amendments as those contained in documents A/CONF.62/L.101 and A/CONF.62/L.102, which caused minimum concern to delegations. His delegation could not, however, support amendments which would disturb the balance achieved in the articles on the exclusive economic zone, particularly those contained in documents A/CONF.62/L.96, L.107 and L.112.

68. His delegation associated itself with the position of the Group of 77 concerning the outstanding issues on First Committee matters and Part XI. Since the subject-matter was relatively new, it viewed the attempt made by the group of 11 in document A/CONF.62/L.104 as constructive in some areas and urged that every effort should be made to facilitate the achievement of general agreement on those issues.

69. Mr. FRANCIS (New Zealand) said he was pleased to learn that the amendments contained in documents A/CONF.62/L.101 and L.109 and the first amendment in document A/CONF.62/L.116 appeared to enjoy widespread support and in fact to satisfy the criteria in document A/CONF.62/62.<sup>3</sup> He feared, however, that most of the other amendments proposed could disturb the package, which had been the subject of long and difficult negotiations over many years. In that regard, he reiterated his delegation's strong support for the conclusion of the Chairman of the Second Committee that there was a real consensus on the need to preserve the fundamental elements of the parts of the convention which were within the competence of the Second Committee. His delegation felt that the present text of article 21 remained the only possible basis for consensus. He hoped that it would not prove necessary to vote on any of the amendments which had been proposed and that the convention would be adopted by consensus at the end of the current session.

70. Mr. GÁLVEZ (Bolivia) said that his delegation supported the statement by the Chairman of the Group of 77 on the need to refrain from proposing amendments affecting the main issues which had already been negotiated and the urgency of completing the work of the Conference on schedule. He reiterated Bolivia's position that the international community should give due consideration to the particular needs of land-locked developing countries and their right to share in the "common heritage of mankind". In that regard, Bolivia fully supported the amendments proposed by Lesotho in document A/CONF.62/L.115.

71. Mr. POSSER DA COSTA (Sao Tome and Principe) reiterated his delegation's position against the reopening of negotiations on Part XI of the draft convention, particularly with regard to the basic elements, and expressed support for the statement made by the Chairman of the Group of 77 in that connection (169th meeting). Experience had shown that, whenever Part XI was discussed, it was the developing countries that made concessions. Acceptance of the concerns of the industrialized countries on the fundamental issues of Part XI and the related annexes, as expressed in documents A/CONF.62/L.121 and A/CONF.62/L.122, could destroy the parallel system, which was the corner-stone of the draft convention.

72. While his delegation appreciated the concern of the delegation of Venezuela reflected in document A/CONF.62/L.108 with regard to article 309, he recalled that the question of delimitation had been the subject of long and difficult negotiations and the provisions contained in articles 15, 74 and 83 represented a compromise position which had been accepted by the majority of delegations. Furthermore, those articles were closely linked to the concepts of the sovereignty and jurisdiction of States with regard to the territorial sea and the exclusive economic zone. They should therefore be accepted without any reservations, so as to rule out any possibility of future conflicts.

73. His delegation supported the amendments contained in documents A/CONF.62/L.101 and A/CONF.62/L.102. Its position on the participation of national liberation movements was well known and, as the United Nations Council for Namibia had been participating as a full member in the work of the Conference since 1980 by decision of the Conference itself, the text of the draft convention should be amended to reflect that decision.

74. Lastly, he stressed the importance of settling the question of the conservation of fish stocks and also, in order to ensure uniform interpretation of Part II, section 3, of the draft

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

convention, the question of the innocent passage of warships through the territorial sea. In a spirit of compromise, a number of countries, including his own, had submitted amendments to article 21 and article 63, paragraph 2

(A/CONF.62/L.114 and L.117 and Corr.1), which they believed could be accepted by the maritime Powers.

*The meeting rose at 10.50 p.m.*

## 173rd meeting

Saturday, 17 April 1982, at 10.25 a.m.

*President: Mr. A. OLSZOKA (Poland)*

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. PRANDLER (Hungary) said that his delegation saw the amendments submitted by delegations as falling roughly into three categories. The first category contained those which were clearly opposed to the major components of the package deal which had been so painstakingly worked out over the previous eight years; those his delegation would not accept. Among them were the extensive proposals submitted in document A/CONF.62/L.121 by the United States of America and six other developed countries, which would radically alter 32 important articles in Part XI of the convention and relevant annexes. As the Chairman of the Group of 77 had stated, such amendments were designed to upset the delicate balance of the compromise reached on some of the key elements of the deep sea-bed mining régime. The same was true, to some extent, of the amendments in document A/CONF.62/L.122 to draft resolution II (A/CONF.62/L.94). The first category also embraced amendments affecting provisions within the purview of the Second Committee. Owing to its emphatic opposition to attempts to further erode freedom of navigation and the rights of the land-locked and geographically disadvantaged States, his delegation rejected, in particular, the amendments relating to innocent passage of warships through the territorial sea (A/CONF.62/L.117 and L.97), the continental shelf (A/CONF.62/L.126), the economic zone and the high seas (A/CONF.62/L.114 and Corr.1) and transit passage through straits used for international navigation (A/CONF.62/L.109). Also in the same group, and similarly unacceptable to his delegation, were the amendments in documents A/CONF.62/L.108 and L.120, which sought to change the very important provisions of article 309 on reservations and exceptions. To open the door to reservations would completely shatter the draft convention and the package deal on which it was based.

2. The second category of amendments consisted of those which accorded with the position of the vast majority of delegations and whose intent was only to increase the chances of general agreement on the convention. His delegation supported, in particular, the proposal of Iraq concerning participation in the convention by national liberation movements (A/CONF.62/L.101), the amendment which would enable Namibia, represented by the United Nations Council for Namibia, to participate (A/CONF.62/L.102) and the proposals in A/CONF.62/L.116, submitted by Peru on behalf of the Group of 77, which provided for a compensation fund for land-based producers of minerals which were also extracted from the sea-bed and for a special commission of the Prepara-

tory Commission on the problems which would be encountered by those producers.

3. He believed that widespread support also existed for the amendments submitted by the Union of Soviet Socialist Republics; those in document A/CONF.62/L.124 would have the effect of tightening the provisions aimed at preventing monopolization of the sea-bed by any single country and would give priority to prospective sea-bed miners who had not yet received authorization, while those in A/CONF.62/L.125 rightly required consensus for the adoption of draft rules, regulations and procedures for the sea-bed régime and would link the anti-monopoly and anti-discrimination clause to the pre-convention preparatory investment stage. He reaffirmed his delegation's support for those useful and important modifications.

4. There was a third category of amendments which, in his delegation's view, were in themselves commendable and would improve the existing text of the draft convention, but which so far had regrettably not received very wide support. His delegation particularly sympathized with those amendments which sought to promote the rights of the land-locked and geographically disadvantaged States in various provisions of the draft convention, including those relating to the access of land-locked States to and from the sea and the participation of the land-locked and geographically disadvantaged States in the exploitation of the economic zone and in the various organs of the Authority.

5. Time was rapidly running out. His delegation and the Eastern European (socialist) States, of which he was Chairman, were firmly convinced that the Conference should abide by the overall aims, methods and timetable set out in documents A/CONF.62/62<sup>1</sup> and A/CONF.62/116,<sup>2</sup> so as to comply with the instructions of the General Assembly in resolution 36/79.

6. Mr. SHEN Weiliang (China) said that, in connection with article 21 of the draft convention, he did not need to enlarge on the explanation already given by the representative of the Philippines, on behalf of the sponsors of document A/CONF.62/L.117, of the position of principle underlying that amendment. He was puzzled by the opposition of a small number of delegations to so modest a proposal; their attitude appeared to imply that they were not willing to respect the security of a coastal State. He had been generally disappointed that no progress had been made with respect to article 21; it had been amply demonstrated that the article as it stood was not a consensus text, and he hoped that the President of the Conference and the Chairman of the Second Committee

<sup>1</sup> 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).

<sup>2</sup> *Ibid.*, vol. XV (United Nations publication, Sales No. E.83.V.4).