

Third United Nations Conference on the Law of the Sea

1973-1982

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173rd Plenary meeting

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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.62/62¹ and A/CONF.62/116,² 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

¹ 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).

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

would continue their efforts to achieve a satisfactory solution and that the spirit of co-operation shown by many delegations would be generally reciprocated. His delegation supported the amendment to article 21 submitted by the delegation of Gabon (A/CONF.62/L.97), which was in line with the position of the sponsors of the informal paper C.2/Informal Meeting/58/Rev.1 of 19 March 1982.

7. His delegation's position with regard to the question of reservations had already been explained. It supported, in principle, the amendments submitted by Romania (A/CONF.62/L.111) and Venezuela (A/CONF.62/L.108 and Corr.1). Making appropriate changes in articles 309 and 310 must be considered seriously if the convention was to be a universally accepted document.

8. In accordance with its position of principle on Part XI of the draft convention and the related annex, annex III, his delegation had welcomed the statement of the representative of the United States of America at the 168th meeting, on 15 April, to the effect that his delegation had withdrawn its "Green Book" (WG.21/Informal Paper 18) and was ready and willing to be a part of the consensus for the adoption of the convention by 30 April. However, the fact that the United States, together with six other countries, was again asking for a large number of substantive amendments to the convention (A/CONF.62/L.121) was hardly in line with that attitude; it was to be hoped that the delegation of the United States would prove the validity of its words through its actions.

9. With regard to the issue of preparatory investment protection, his delegation believed that draft resolution II (A/CONF.62/L.94) and the consultations being conducted by the President of the Conference were of positive significance. On the other hand, the proposals made by the United States and four other countries (A/CONF.62/L.122), which sought to legalize the unilateral legislation of a small number of countries, and particularly the paragraph 6 (b) proposed by them, which would permit the commencement of commercial production after 1 January 1988 if the convention had not entered into force by that date, were quite unacceptable. His delegation supported the reasonable suggestions in document A/CONF.62/L.116 for amendments to draft resolution II submitted by Peru on behalf of the Group of 77, in particular those relating to paragraphs 1 (a), 1 (e), 8 (a) and 14; reasonable objective criteria should be prescribed for pioneer investors and no names of pioneering States or entities should be listed in the draft resolution.

10. His delegation endorsed the amendment to article 62 proposed by Romania and Yugoslavia in A/CONF.62/L.112, the modification to article 63 proposed in document A/CONF.62/L.114 by Australia and seven other countries, Iraq's amendment (A/CONF.62/L.101) to the decision relating to national liberation movements and the draft resolution submitted by Peru on behalf of the Group of 77 concerning the development of national marine science and technology and ocean service infrastructures (A/CONF.62/L.127).

11. Mr. ENKHAISKHAN (Mongolia) said that he was dismayed by the number of formal amendments which had been submitted; the situation was depressingly reminiscent of the very early stages of negotiation. Few of the amendments offered improved prospects of achieving consensus; on the contrary, they sought to introduce elements which threatened to demolish the whole structure of the draft convention. His own delegation, representing a land-locked country which would not gain from the convention as much as it might reasonably have expected, had nevertheless refrained from submitting similar amendments, in the belief that it was essential to subordinate national interests to the aim of completing and adopting the convention, thus benefiting the whole of the world community.

12. His delegation could not accept the proposed amendments to article 21 (A/CONF.62/L.97 and L.117). The security of coastal States was already sufficiently safeguarded, and to add the word "security" in paragraph 1 (h) would give those States exclusive control over the territorial sea, thereby creating an imbalance not only in the very important provisions of that article but in the sea law package as a whole.

13. His delegation also rejected the proposals put forward in A/CONF.62/L.114; they were detrimental to the interests of land-locked and geographically disadvantaged States and would discourage the use of arbitral tribunals.

14. The proposals of Venezuela (A/CONF.62/L.108 and Corr.1) and Turkey (A/CONF.62/L.120) for amending article 309 would ultimately lead to the collapse of the package deal, for to allow reservations and exceptions would be contrary to the spirit and the letter of the convention and to the principle of consensus on which it was based.

15. The amendments proposed by delegations of certain Western countries to Part XI of the convention and its related annexes were unacceptable to his delegation. The proposals in document A/CONF.62/L.104 were clearly designed to shatter the compromise reached on that part of the text, and the proposed subparagraph (c) of article 155, paragraph 3, in particular, which made subsequent amendments to the system of exploration and exploitation not binding on States not ratifying them, would invalidate the concept of a unified legal régime which was vital to the strength and effectiveness of the convention.

16. Sweeping amendments had also been proposed for article 161 (A/CONF.62/L.104). The small changes to paragraphs 1 and 7 would, in combination, create the totally unacceptable situation in which the group of Western European and other States—including the United States of America and Japan—would effectively be able to veto proposals for the budget of the Authority. Similarly, the proposals relating to the same article in document A/CONF.62/L.100, adding two seats to the Council, would benefit only two regional groups, while the changed composition would necessitate a change in the number of votes required to adopt or block a decision, thus disrupting the balance achieved by the existing procedures. The legitimate interests of the medium-sized industrial countries were already adequately provided for in the text as it stood.

17. His delegation likewise rejected the other amendments of the same nature, including those in documents A/CONF.62/L.106, L.108, L.109, L.119, L.121 and L.126, and hoped that the submitting delegations would not insist on them, so that all might continue working together in a spirit of good will. He would be happy to endorse any proposal which, instead of disrupting the existing valid compromises, would extend the areas of agreement, clarify ambiguities and strengthen the régime of the convention.

18. Mr. JUNG (Federal Republic of Germany) said that his delegation was a sponsor, along with six other countries, of a series of amendments to Part XI of the convention and to the draft resolution on the Preparatory Commission. He fully supported the statement made by the representative of the United States of America in introducing those amendments.

19. In preparing those proposals, account had been taken of as many ideas of the group of 11 as possible. The proposals in document A/CONF.62/L.104, on the other hand, failed to meet his delegation's concerns in several respects; for example, it continued to believe that the parliaments of many countries would be unwilling to ratify a convention which could be changed by a two-thirds majority and without the consent of those directly concerned.

20. On the subject of unfair economic practices, he endorsed the statement made by the representative of Belgium on behalf of the European Economic Community and its 10

member States with respect to the amendment in document A/CONF.62/L.98. Along with others, his delegation did not share the interpretation of article 151, paragraph 2 (f), put forward by Zaire in document A/CONF.62/L.107. It likewise could not accept the various proposals regarding amendments to articles 6 and 7 of annex III.

21. The amendments to the resolution concerning preparatory investments (A/CONF.62/L.122) which his delegation had sponsored, together with five other countries, were designed to encourage those investors to continue the development of sea-bed mining. It therefore followed that his delegation could not accept the amendments put forward in documents A/CONF.62/L.97, L.105, L.106 and L.116; it particularly opposed the proposals that the size of an exploration site should not exceed 60,000 km².

22. Although the protection of preparatory investments had become a key issue of the Conference, it could not be separated from the overall problem of Part XI. His delegation was committed to seeking consensus and felt that, particularly in view of the interesting comments of the Chairman of the Group of 77 at the 169th plenary meeting, negotiations on all those issues should continue in informal discussions with a view to resolving them in the forthcoming two weeks.

23. His delegation had refrained from submitting formal amendments on Second and Third Committee matters, as it chose to rely on its written statement of 10 March 1981 (A/CONF.62/WS/16)³ and subsequent statements in plenary meetings, and would in any case have preferred the fourth and fifth stages of the Conference to concentrate on Part XI and related matters. As earlier negotiations had shown, the amendments designed to change the substance of the provision concerned, including those referred to by the representative of Belgium on behalf of the European Community with regard to Second Committee matters, were not generally acceptable. Amendments to article 21 were dangerous because they were likely to upset the delicate balance between the right of coastal States to extend the breadth of the territorial sea to 12 nautical miles and the right of innocent passage. In particular, the proposal in document A/CONF.62/L.117 was even farther removed in substance from the existing wording of article 21, as it would give additional and vague powers to coastal States to impede innocent passage. His delegation was well aware of the legitimate security interests of coastal States but considered them to be fully safeguarded by the existing text.

24. His delegation's failure to comment on any amendment before the Conference should not necessarily be construed as approval.

25. Mr. PASHKEVICH (Byelorussian Soviet Socialist Republic) said that his delegation fully agreed with the many delegations which actively supported the balanced package of proposals in the official text of the draft convention (A/CONF.62/L.78)² and those contained in documents A/CONF.62/L.93 and L.94. In the interest of concluding the work of the Conference as speedily as possible, the introduction of most of the amendments could have been avoided altogether. Discussion on the amendments had confirmed that an overwhelming number of participants supported the compromise which had been achieved and were resolutely against attempts to destroy it.

26. When assessing each amendment, it was necessary to consider the whole "package" of proposals in the draft convention, since it reflected the totality of mutual concessions made by all interested parties. It was not enough to pay lip-service to that principle; it had to be the guiding principle in completing work on the draft convention and the related draft

resolutions. In determining its position, his delegation also took account of the agreed position of the Group of 77.

27. His delegation could not, therefore, support the amendments in documents A/CONF.62/L.97, L.106, L.107, L.114, L.116, L.117, L.118 and L.126. In addition, the proposals for an increase in the number of members of the Council and in the representation of Western European countries on it (A/CONF.62/L.100), and for changes in the mechanism of voting in the Council (A/CONF.62/L.104), were also unacceptable. His delegation could not support the intent of the proposals in A/CONF.62/L.121 and L.122, which were aimed at protecting the narrow interests of individual countries and establishing a rule of "first come, first served" within an international legal instrument. In that connection, it was necessary to make the anti-monopoly provisions in annex III and in the resolution on the Preparatory Commission specific, as proposed by the amendments in documents A/CONF.62/L.124 and L.125, the purpose of which was to ensure the most favourable conditions for observing the principle of the common heritage of mankind.

28. With regard to the amendments in documents A/CONF.62/L.121, L.122 and L.104, the Group of 77 was against upsetting the balance achieved on a number of fundamental principles in Part XI of the text of the draft convention, and his delegation took the same view. It also wished to emphasize the unacceptability and dangerousness of the amendments to article 309 and the proposal for its deletion (A/CONF.62/L.108 and L.120). The convention on the law of the sea could be an important instrument for strengthening international co-operation in the peaceful exploitation of the seas and oceans for the benefit of mankind only if all its provisions were applied by every participant. Reservations could so upset the balance of interests achieved in the convention that nothing worthwhile would remain, with all the dangerous consequences that would ensue. That could not be allowed to happen.

29. Finally, his delegation associated itself with the appeals to sponsors of amendments not to press them if the necessary support was not forthcoming. There was not a single delegation which had not at some time declared its willingness to achieve a mutually acceptable compromise on the text of the draft convention. It was to be hoped that, when only one step remained to be taken to achieve that aim, delegations would not depart from the principle of goodwill and so give reason to doubt the honesty of their earlier protestations.

30. Mr. GABOU (Congo) emphasized that, in using their right to submit amendments, delegations should keep in mind the fundamental basis for work of the Conference, formed by the Gentleman's Agreement on the rule of consensus and the programme of work contained in document A/CONF.62/L.80,² adopted by consensus. To submit amendments that might disrupt or even alter the delicate balances of the existing draft convention would undermine the whole structure of the text and prevent the Conference from achieving its objectives.

31. In connection with the amendments to Part XI of the draft convention (A/CONF.62/L.121 and L.122), he pointed out that the text as it stood provided a democratic and balanced system for managing the resources of the sea and the sea-bed as the common heritage of mankind with due regard for the reasonable self-interest of certain countries. It reflected a consensus reached after lengthy and very detailed negotiations in which the authors of the amendments had played a very active part. The composition and voting procedures in both the Authority and its major subsidiary organ, the Assembly, were entirely democratic, with each State party guaranteed membership and a vote.

32. Moreover, through the Enterprise, a unitary system had been established under which all peoples of the world held

³ *Ibid.*, vol. XIV (United Nations publication, Sales No. E.82.V.2).

the monopoly for the direct exploitation of the sea's resources. Moreover, through the Authority, provision had been made for a parallel system of exploitation by certain public and private national enterprises, most of them from the countries which had submitted the amendments in documents A/CONF.62/L.121 and L.122. Through the Enterprise, the parallel system accorded those national enterprises the privilege of individual access to the sea's resources and therefore required them to provide and ensure the financing of the transfer of technology required for the exploitation of those resources. The effect of the two amendments (A/CONF.62/L.121 and L.122) would be to reduce the parallel system to a unitary system for the benefit of a few powerful national enterprises in the rich countries.

33. The parallel system also protected land-based producers of minerals by placing a production ceiling on marine mineral resources and providing for compensation for economic damage which might be suffered by land-based producing countries if the market were swamped by marine minerals. Finally, a Review Conference had been provided in the draft convention to correct, by majority vote, possible shortcomings in the functioning of the system. To demand unanimity on any corrections would open the way for a minority, acting out of pure self-interest, to block the wishes of a reasonable majority of mankind.

34. The amendments in documents A/CONF.62/L.121 and L.122 were a severe blow to the concept of the resources of the sea and the sea-bed as the common heritage of mankind. The proposed change in article 137, paragraph 2, would mean that those resources would be available for unfettered exploitation by national companies. The effect of the deletion proposed in article 140, paragraph 1, was to exclude non-independent peoples from the benefits to be derived from exploitation of those resources. The proposed deletions in article 150 (d) and (e) removed the protection afforded to land-based producers. Article 153, paragraph 2 (b), as amended, would no longer require national companies to act in association with the Authority, an obligation which was essential for the moral justification of the parallel system.

35. The mechanism for restoring balance in the established system in the event that it failed to serve the interests of the whole of mankind was also perverted by the amendments. The proposed changes in article 155 would enable a minority to block the review process. Further changes proposed in the articles which followed would accord excessive privileges to that minority by restricting the powers of the Assembly, giving privileged status to certain States and, ultimately, enabling national groups to make decisions contrary to the will of the majority.

36. The proposed amendments to annex III would have the effect of awarding contracts for exploitation to any company holding a contract for exploration, and the obligation to transfer technology to the Enterprise would become a mere recommendation.

37. The amendments to the draft resolution governing preparatory investment (A/CONF.62/L.122) would have the effect of establishing a system outside the system provided for in the convention which would operate for the benefit of national companies beyond the control of the Authority. The Group of 77 had accordingly requested changes (A/CONF.62/L.116) in those amendments, which had to be regarded as improper and excessive. His delegation supported the amendments proposed by the Group of 77 to article 171 and draft resolutions I and II.

38. The amendment to article 21, on the laws and regulations of the coastal State relating to innocent passage, which his delegation had sponsored together with 29 other States (A/CONF.62/L.117) was fully justified because the question of the infringement of the security of the coastal State had

never been negotiated or been the subject of consensus. The territorial sea through which innocent passage was to be permitted was an integral part of the territory of the coastal State, and its territorial integrity had to be safeguarded. Foreign warships, which were the military instruments of a sovereign State, clearly could not be allowed to move freely in those waters without the coastal State's consent. The freedom of the high seas did not extend to the territorial sea, where the coastal State exercised exclusive sovereignty. Codification of that rule would contribute to world peace.

39. Mr. DAVEREDE (Argentina) said that his delegation shared the general view expressed at the Conference that the overwhelming majority of the provisions of the draft convention represented the best and most balanced text that could have been hoped for. Unfortunately, however, there were still a few provisions on which there was no consensus, and negotiations on those exceptions should be intensified. He was convinced that the changes sought in those few provisions by a growing number of delegations eager to protect their legitimate interests could be adopted without disturbing the balance achieved or jeopardizing the result of the Conference.

40. With regard to Part XI and to the annexes and draft resolutions relating to it, his delegation supported the amendments introduced by the Peruvian delegation on behalf of the Group of 77 (A/CONF.62/L.116).

41. The proposal to add the word "security" in article 21, paragraph 1 (h), would have the effect of greatly improving the text by making explicit an inherent right of coastal States—one which had already been implicitly recognized in article 19 and other provisions of the draft convention. Moreover, the right to demand prior notification or authorization for the passage of warships through the territorial sea was part of national law in many States and was recognized by international law. He hoped that consensus could be reached on the question through serious negotiations.

42. The amendment (A/CONF.62/L.114) to article 63, paragraph 2, would also improve the text. The article should be redrafted to bring it into line with other parts of the draft convention and thereby to ensure the conservation of living resources when the same species occurred within both the exclusive economic zone and an area adjacent to it. He was confident that an acceptable text could be arrived at during a final round of negotiations.

43. Argentina further supported the Venezuelan and Turkish amendments to article 309 (A/CONF.62/L.108 and L.120). They had presented sound arguments to support their adoption. The amendment to article 310 submitted by Romania (A/CONF.62/L.111) also warranted serious consideration in further consultations because its aim was to make the convention universally acceptable.

44. Such consultations should also be held on the principle, expressed in document A/CONF.62/L.98, that States parties should refrain from unfair economic practices which could lead to the artificial growth of sea-bed mining, which his delegation strongly endorsed. The amendment by the Soviet Union to draft resolution II (A/CONF.62/L.125), which dealt with some of those unfair practices, should also be discussed.

45. His delegation urged the Conference to reject the amendments proposed to articles 56, 62, 69, 70 and 82 relating to the exclusive economic zone. They were unsound and entirely unjustified, particularly when a consensus had been so painstakingly hammered out on the existing text. He appealed to all delegations to exhaust every effort to negotiate on other amendments in a spirit of compromise, ever mindful, however, of the need to preserve the balance achieved in the overall package and to adopt a universally acceptable convention.

46. Mr. HAYES (Ireland) said that his delegation endorsed the remarks of the Belgian representative, speaking for the

European Economic Community, particularly with regard to the participation of international organizations in the future convention.

47. He urged those delegations which had submitted amendments regarded by some as upsetting the balance of the draft convention to be on their guard against the risk of jeopardizing the consensus reached after lengthy negotiation and to follow the example of Greece by withdrawing their amendments.

48. Ireland had sponsored only one group of amendments (A/CONF.62/L.104) to Part XI and annex III of the draft convention in the belief that the adjustments called for did not involve any fundamental change or promote any national interest, but might improve the prospects for consensus on unresolved issues. His delegation also hoped that the decision to adopt the convention at the end of the session would be taken by consensus.

49. Mr. YATIM (Malaysia) said that he shared the view that any adjustments made in the text should clearly be improvements which did not affect the balance achieved over years of negotiation. Accordingly, his delegation could not support the proposals relating to articles 62 and 76 (A/CONF.62/L.107 and L.126), respectively, and would prefer the existing text to be retained.

50. His delegation could support the Spanish amendment to article 39, paragraph 3 (a) (A/CONF.62/L.109), but it opposed the proposal to amend article 233 because it would upset the balance achieved in the existing text. It could support the expanded text of paragraph 3 of article 60 (A/CONF.62/L.93), but maintained its firm opposition to the French amendments to that wording (A/CONF.62/L.106). It likewise could not support the Greek amendment to article 19, paragraph 2 (f) (A/CONF.62/L.123), which was too restrictive. On the other hand, his delegation hoped that the amendment to article 21, paragraph 1 (h), introduced by the Philippines in the name of 27 countries (A/CONF.62/L.117) and based on an earlier amendment submitted by Gabon would be given due consideration because it reflected an effort to attain consensus. As a member of the Group of 77, Malaysia associated itself with the position adopted by the Group on the other issues pertaining to the convention and hoped that a universally acceptable instrument would be adopted by consensus.

51. Mr. SALLOUM (Syrian Arab Republic) said that there was a need to reach a compromise on article 21 concerning the laws and regulations of the coastal State relating to innocent passage. His delegation had therefore become a sponsor of the amendment in document A/CONF.62/L.117, which was aimed at guaranteeing the security and sovereignty of the coastal State. In that connection his delegation also supported amendment A/CONF.62/L.97, which would require prior authorization and notification for the passage of warships through the territorial sea.

52. National liberation movements must be permitted to participate fully in the convention: peoples striving for independence must not be deprived of their right to share in the common heritage of mankind just because at the time of signature of the convention they were not yet free. Otherwise the convention might later have to be amended. In order to avoid that situation, national liberation movements recognized by the United Nations should participate fully in the convention from the outset.

53. Mr. MUDHO (Kenya) said that the draft convention, as amended by documents A/CONF.62/L.93 and L.94, already involved many compromises which had been reached by consensus. The draft convention, inevitably, did not satisfy everybody, but it was probably the best compromise which the international community could reach.

54. His delegation endorsed the position of the Group of 77 as stated by its Chairman at the 169th meeting, on 15 April 1982, and fully supported the amendments submitted on behalf of the Group (A/CONF.62/L.116). The proposal to add a new subparagraph (f) to article 171 and the amendment contained in document A/CONF.62/L.102, which would add Namibia, represented by the United Nations Council for Namibia, to the signatories of the convention, had received wide acceptance. His delegation also supported the proposals made by Iraq in document A/CONF.62/L.101.

55. A number of amendments had been proposed which seemed designed to shatter the package which had been so laboriously put together. He did not doubt the good faith of the sponsors of those amendments, but if each individual State had pursued its own interests in a similar way, there would have been no draft convention. He appealed to the sponsors of amendments which would change the draft convention substantially to withdraw them if there was no prospect of reaching a consensus on them. It was essential that all States should demonstrate the political will necessary to conclude the convention on the law of the sea.

56. Mr. AL JUFAIRI (Qatar) said that he hoped that the sponsors of certain amendments would bear in mind the sacrifices which had been made by small States, such as his own, for the sake of reaching a consensus on the draft convention and that they would be prepared to accept a consensus decision of the Conference on the issues involved.

57. His delegation supported the statement made by the Chairman of the Group of 77 at the plenary meeting on 15 April. He also supported the proposals for the participation in the convention of national liberation movements (A/CONF.62/L.101) and of Namibia (A/CONF.62/L.102), the amendments submitted by Peru on behalf of the Group of 77 (A/CONF.62/L.116) and the draft resolution on development of national marine science, technology and ocean service infrastructures submitted by Peru on behalf of the Group of 77 (A/CONF.62/L.127). The amendment in document A/CONF.62/L.117 would better protect the security of small and developing countries.

58. He hoped that the sponsors of the other amendments would not press them to a vote; that procedure would impede the process of consensus which all were striving to maintain. A number of those amendments served the selfish interests of individual sponsors and were not acceptable to the majority because they jeopardized the common heritage of mankind.

59. Mr. PIRZADA (Pakistan) said that he hoped that delegations would take account of the comments made during the debate and withdraw their amendments so that the Conference could proceed to the adoption of the convention. His delegation had problems with certain articles but, in the interest of consensus, had not proposed amendments which might be unacceptable to other delegations. It was therefore a sponsor of only one minor amendment, that relating to article 21, in document A/CONF.62/L.117. The issue of innocent passage of warships through territorial waters had never been satisfactorily resolved. It was the view of his delegation that the traditional right of the coastal States under customary international law to take all appropriate measures to safeguard their security required to be clearly stated in order to avoid any future disagreements relating to its interpretation. The security of the State was the primary responsibility of the State concerned and that right was inherent in the concept of sovereignty.

60. Pakistan's consistent objective had been to draft a universally acceptable and applicable convention; the early entry into force of the convention was essential for the orderly regulation of the oceans. A convention of such magnitude was, however, bound to leave certain problems—bilateral, subregional or regional—unresolved. Some of these problems

might not have universal dimensions but might prevent some States from becoming parties. In order to overcome those difficulties and to enable States parties to ratify the convention at an early date, a provision permitting reservations in certain limited areas which were not international in character should be included. The proposal in document A/CONF.62/L.120 was too wide in its application while that in A/CONF.62/L.108 was too restrictive. The two proposals should be harmonized in such a manner that reservations would be permitted but their scope circumscribed. Article 125, on the question of the access to and from the sea and the freedom of transit of land-locked States, should be brought into the ambit of permissible reservations; the issue was purely bilateral in nature and should be governed by bilateral agreements.

61. His delegation had continued to express reservations on the language included in articles 69 and 70 regarding the right of land-locked States and the right of States with special geographical characteristics, since it did not recognize the participation of any State in the living resources of the exclusive economic zone as a matter of right. It had refrained from proposing any amendments to those articles in a spirit of accommodation; similar restraint had not, however, been exercised by other delegations, which had tried to change the text of the articles in question. His delegation could not therefore accept the proposals in document A/CONF.62/L.96, which would amend article 70, in document A/CONF.62/L.99 relating to article 62 (2) and article 124, in document A/CONF.62/L.107 relating to articles 62, 69, 70, 71 and 75, in document A/CONF.62/L.112 relating to article 62 and in document A/CONF.62/L.114 relating to article 63. His delegation would be prepared to support the amendments in documents A/CONF.62/L.101 and L.119 with respect to participation and those in documents A/CONF.62/L.102 and L.111 relating to articles 305 and 310, respectively. It supported in particular the right of Namibia to become a party to the convention and the proposal on national liberation movements. His delegation would not be able to support the amendments to articles 76 and 121 proposed in document A/CONF.62/L.126.

62. On the question of the amendments to Part XI of the convention, his delegation supported the amendments in document A/CONF.62/L.116 proposed by the representative of Peru on behalf of the Group of 77. His delegation held firmly to the view that Part XI was a package of negotiated texts which should not be subjected to fundamental and substantial changes. He hoped that the delegations which had submitted amendments to Part XI would agree that the package should be left intact; to insist on substantial changes would inevitably wreck the package and would be unacceptable to a vast majority of the Conference. He therefore urged those delegations which had proposed amendments to Part XI to withdraw them and not to press them to a vote.

63. Mr. MWANANG'ONZE (Zambia) said that some of the amendments tabled sought to improve the draft convention while others tried to put the clock back. In his delegation's view, the official draft text remained the basis for consensus; others, unfortunately, still wished to negotiate issues on which his delegation, in common with the Group of 77 and the group of African States, could make no more concessions.

64. For example, his delegation could accept no departure from the text of article 150, which dealt with activities in the Area and how its resources were to be exploited, or from article 151, which contained the formula for limiting production from the Area and which, as it stood, failed to protect land-based producers adequately. His delegation also wished to emphasize its unswerving support for the existing provisions regarding the Review Conference, the non-separation of the

powers of the Authority, the transfer of technology and the composition of the Council.

65. On the other hand, his delegation supported the improvements to the convention proposed in documents A/CONF.62/L.98, L.99, L.101, L.102, L.105, L.107, L.110, L.115, L.116, L.124 and L.126. Of those amendments, that in document A/CONF.62/L.98 was an attempt to introduce a certain measure of control over States which might resort to unfair practices when exploiting the resources of the Area. Such practices had to be forbidden if international trade was to flow smoothly and profit as many participants as possible. His delegation also strongly supported the amendments proposed in document A/CONF.62/L.101 concerning the representation of liberation movements. It was only just that liberation movements recognized by the United Nations, the Organization of African Unity and other regional groups should be given their fair share of representation in the convention pending their achievement of nationhood.

66. His delegation found it very difficult to understand, let alone accept, the amendments proposed in documents A/CONF.62/L.100, L.104, L.106, L.108, L.109, L.120, L.121 and L.122. The second document, in particular, which appeared to be a successor to the document of the group of 11, amounted to a betrayal of the draft convention. The group of 11 had originated in an attempt to break out of the impasse in negotiations between the Group of 77 and the industrial nations which wished to exploit the Area. Unfortunately, its document had since taken on a life of its own, and a well-meant effort had been distorted to suit certain national ambitions. Since some sponsors of the amendment had said that they could live with the draft convention as it stood, his delegation hoped that the amendment would be withdrawn.

67. The amendments in documents A/CONF.62/L.121 and L.122 touched on a subject on which his delegation, together with the Group of 77 and the group of African States, saw no possibility of further concessions. His country, together with Zaire, Zimbabwe and Gabon, had proposed a formula for limiting production in the Area under article 151 of the convention, using cobalt and nickel as the basis for calculations. That formula would have made it possible to control exploitation at an acceptable level, but it had not been supported. The new development was that attempts were being made to attack article 151 itself and effectively remove limitations on production from the Area. Concessions made by the Group of 77 in good faith were being used in attempts to make further changes to the draft convention, but such manoeuvres could still be stopped before it was too late.

68. When discussions on protection of preliminary investments began, not more than five or six entities had been involved, but as matters stood, there were certainly 10 or more, and that was putting a severe strain on the production-limitation ceiling. That was why his delegation could not support amendments such as those in documents A/CONF.62/L.121 and L.122. Even with the existing draft convention, the industrial nations would be the greatest beneficiaries; it was already distorted in their favour, and efforts to obtain more one-sided advantages were undermining the prospects for its adoption.

69. Draft resolution II (A/CONF.62/L.94) represented a unilateral concession by the Group of 77 which offered a certain level of protection to investments made illegally in the Area, but that protection was being taken for granted and more demands were being made. That was outrageous. The draft convention offered no real protection to the land-based producers, but only a three- to five-year period of grace. Those producers did not want a monopoly but would like to share in the production of metals which were not in short supply. In his own country's case, the production of copper was already unprofitable, and unless its income from cobalt could

be protected, the basis of the country's economy would be destroyed.

70. It was still not too late to adopt a convention if the industrial nations stopped insisting on their amendments, but no more concessions could be made. If the industrial nations reduced their demands, there was no reason why a convention should not be adopted which would allow them to exploit the resources of the Area freely, without fear of litigation and other obstacles to their companies' operations.

71. The PRESIDENT said that, as there were no more speakers, the debate on formal amendments to the draft convention in accordance with the decision of the Conference contained in document A/CONF.62/L.116² had been concluded.

72. Mr. MAZILU (Romania), speaking on a point of order, said that while there had been consultations and negotiations on some amendments, on others there had been none. He asked how the President of the Conference intended to arrange for consultations and negotiations on all amendments alike, as his delegation had requested, under rule 37 of the rules of procedure. His delegation took the view that goodwill and responsibility must be shown in settling all outstanding issues affecting the vital interests of participating States. It did not understand the opposition to a compromise on the right of innocent passage through the territorial sea. A compromise formula would not endanger the convention; on the contrary, to guarantee the sovereignty, territorial integrity and security of States in their territorial sea, including their right to adopt

national laws and regulations on the passage of foreign warships, was a prerequisite for concluding a viable and enduring convention on the law of the sea.

73. The sovereignty, territorial integrity and security of States could not be sacrificed as part of a "package deal". He therefore appealed strongly to the President of the Conference to take all necessary steps, even at so late a stage, to secure an improvement to the text of the convention which fully respected the fundamental principles of international law, equity and justice. That was only possible if the legitimate interests of all States, large or small, were taken fully into account and a genuine effort was made to reach real consensus.

74. The PRESIDENT said that he would bring the representative of Romania's concern to the attention of President Koh, who had already indicated that delegations themselves might have to take the necessary initiatives. The fact that the formal debate on amendments had been closed did not preclude the possibility of further consultations and negotiations.

75. Mr. MAZILU (Romania) said that it was important for President Koh himself to take a hand in settling the vital question, of great concern to many delegations, which he had raised.

The meeting rose at 1.05 p.m.

174th meeting

Friday, 23 April 1982, at 11 a.m.

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

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

Report of the President in accordance with rule 37 of the rules of procedure

1. The PRESIDENT read out his report in A/CONF.62/L.132 on his efforts to achieve general agreement in the period of deferment of voting on the amendments submitted in documents A/CONF.62/L.96 to A/CONF.62/L.126, as required of him under rule 37, paragraph 2 (c) of the rules of procedure, and the Conference's programme of work, and drew attention to the proposals in the annexes to his report. Since the documents had just been circulated, he asked delegations not to comment on the proposals at the current meeting. There would be full opportunity for them to study the report and discuss the proposals in their regional and interest groups and then, if it was considered desirable, for all to express their views in a plenary meeting the following week. In the meantime, it should be understood that the proposals in A/CONF.62/L.132 did not have the same status as documents A/CONF.62/L.78,¹ L.93 and L.94.

2. The proposals would not be put to the vote with the other formal amendments on 26 April, but dealt with in conjunction with documents A/CONF.62/L.78, L.93 and L.94 at a subse-

quent date, in any case no later than the deadline of 30 April 1982.

3. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, said that it was known to all delegations and, indeed, clearly apparent from the President's report that there was no general agreement on certain major issues. He therefore objected to the inaccurate assertion in paragraph 19 of the report that as a result of consultations an *ad referendum* agreement had been reached on the text of the draft resolution (A/CONF.62/L.132, annex IV) which would replace draft resolution II in A/CONF.62/L.94. During the consultations, his delegation and those of the other East European socialist countries had repeatedly declared that any agreement, even *ad referendum*, on the new draft resolution was unacceptable. That position had been reaffirmed by the letter of 22 April 1982 (TPIC/8) addressed by his delegation to the President, on behalf of the group of Eastern European (socialist) States, which underlined the evident fact that his country, mentioned in paragraph 1, subparagraph (a) (i) of that draft resolution, was discriminated against as a pioneer investor as compared with the States mentioned in subparagraph (a) (ii).

4. The PRESIDENT repeated that he was not inviting comments on the proposals at the present time; it was important to wait until delegations had had the opportunity to study the report properly.

5. Mr. KOZYREV (Union of Soviet Socialist Republics), speaking on a point of order, said that the amendments as submitted in the President's report appeared to undermine the agreement already reached; he therefore requested a further

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).