Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.178

178th Plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVI (Summary Records, Plenary, First and Second Committees, as well as Documents of the Conference, Eleventh Session)*

ing the status to be given to individual companies was one for States and not for conferences.

47. Mr. POWELL-JONES (United Kingdom) rejected the suggestion by the representative of the Soviet Union that the United Kingdom did not intend to sign the convention. His Government had taken no final position, and would not do so until the convention had been completed. His Government believed that the adoption by consensus of a generally agreed convention would be greatly facilitated by the President's technique of reporting the results of negotiations undertaken in accordance with rule 37. He noticed that negotiations were continuing on a number of matters.

48. He could accept the provisions on participation set out in annexes I and II of the President's report (A/CONF.62/L.132), although he considered it essential that satisfactory arrangements should be made for the protection of preparatory investment. The draft resolution in annex IV of the President's report was the fruit of long and difficult negotiations but still contained some provisions which his delegation found to be unnecessarily restrictive. However, in a spirit of compromise and in the interest of reaching over-all agreement on a convention, he was ready to accept it and hoped it would be accepted by other delegations in the same spirit.

49. Annex V proposed three amendments to Part XI of the convention which he could accept, although he believed that further changes were still needed. He hoped that the discussions which the President was holding would result in further improvements, particularly in relation to the transfer of technology, and that the draft convention would thus become acceptable to all delegations.

50. Mr. AL-WITRI (Iraq), speaking in exercise of the right of reply, said that a letter circulated as a document of the Conference (A/CONF.62/L.138) mentioned the amendments proposed by Iraq in document A/CONF.62/L.101, which had been adopted by consensus. The initial proposal of the Group of 77 had been to consider national liberation movements as parties to the convention and to give them all the rights of States, because the sea-bed was the common heritage of mankind, but the Group had accepted a compromise which would give national liberation movements observer status in the Authority with the right to sign the final act as observers. That had been approved by the entire Conference. The letter in document A/CONF.62/L.138 was not part of the will of the Conference, and the entity which had produced it did not represent a peace-loving country; on the contrary, it had been condemned by the international community as a violator of the principles of the United Nations. That entity had therefore no right to become a party to the convention or to be a member of the Authority.

51. Mr. ROSENNE (Israel), speaking in exercise of the right of reply, said that, as for peace-loving States, it was Iraq which had unleashed an atrocious war on one of its neighbours. He referred representatives to the statement on peace-loving qualities being made in the General Assembly at that very moment by the representative of Israel.

The meeting rose at 1.10 p.m.

178th meeting

Wednesday, 28 April 1982, at 3.35 p.m.

President: Mr. A. DJALAL (Indonesia)

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

STATEMENTS ON THE REPORT OF THE PRESIDENT IN ACCORDANCE WITH RULE 37 OF THE RULES OF PROCEDURE (*continued*)

1. Mr. NAKAGAWA (Japan), referring to annex IV of document A/CONF.62/L.132, on the treatment of preparatory investment, said that his delegation was satisfied with the content of the annex as a whole but was not convinced of the necessity or wisdom of allocating an area of 150,000 km^2 to pioneer investors; a much smaller area, for example 60,000 or 80,000 km^2, would be sufficient to enable the pioneer investors to engage in exploration and exploitation of sea-bed minerals and would enable a greater number of entities to engage in mining activities from the early stage.

2. His delegation supported the three amendments proposed in annex V of the document. However, it hoped that the informal negotiations would result in further amelioration of the text of Part XI. The question of the obligatory transfer of technology owned by a third party was particularly worrying; such an obligation was not easy to sustain from a legal viewpoint and should be changed into a more practical formula, such as that provided for in document A/CONF.62/L.104.

3. It was to be hoped that the results of the informal negotiations, together with other proposals already included in annexes I, II, III and IV, could be embodied in the existing text of document A/CONF.62/L.78[1] and that the Conference could adopt the final text as a whole by consensus on 30 April.

4. Mr. GOERNER (German Democratic Republic) said that the existing text of the draft convention on the law of the sea, together with documents A/CONF.62/L.93 and L.94, embodied a compromise which took account of the legitimate rights and interests of all States. The fate of most of the amendments proposed during the final negotiations had clearly shown that the overwhelming majority of States supported the results achieved in many years of negotiations and was not prepared to permit substantive changes to the draft convention or the documents pertaining to it.

5. There was widespread support among delegations for the amendments submitted in documents A/CONF.62/L.101 and L.119. National liberation movements recognized by the United Nations and the regional intergovernmental organizations concerned had the right, both on political and moral and on international legal grounds, to be parties to the new convention. Paragraph 10 of the report to the President (A/CONF.62/L.132) was a step in the right direction. The draft convention should be improved on the lines proposed in document A/CONF.62/L.101.

6. His delegation did not object to the proposal made in document A/CONF.62/L.119 to the effect that article 4,

[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).

paragraph 6, of annex IX should be deleted. It clearly followed from other paragraphs of that article, especially paragraphs 5 and 7, and from other provisions of the convention that an international organization that was a Party to the convention might implement provisions relating to the reciprocal granting to the nationals of its member States of national or any other special treatment with regard to matters relating to which competence had been transferred to it by its member States which were States Parties only to the extent that that would be in strict conformity with the provisions of the convention.

7. His delegation could agree to the recommendation, in paragraph 14 of the report of the President of the Conference, that the amendment contained in paragraphs 1 and 2 of document A/CONF.62/L.116 and the draft resolution I in document A/CONF.62/L.94 should be incorporated into the draft convention.

8. In a spirit of compromise, his delegation was prepared to accept the recommendations in paragraphs 24 and 25 of the report to the effect that the proposed modifications to articles 150, 155 and 161 should be incorporated into the draft convention. It did not, however, agree with the determination made in paragraph 19 of the report or with the recommendation made in paragraph 20 concerning the results of negotiations on the draft resolution on the treatment of preparatory investment. In a letter of 22 April 1982 addressed to the President of the Conference (A/CONF.62/L.133), the delegation of the Soviet Union had reported that the group of Eastern European (socialist) States had reservations about that new variant for dealing with the question of preparatory investment protection.

9. It clearly followed from paragraph 1 of draft resolution II, governing preparatory investment in pioneer activities relating to polymetallic nodules, contained in annex IV of the report, that the status of pioneer investor would be awarded to natural or juridical persons of the Soviet Union only when the Soviet Union had signed the convention; in contrast, that status was accorded to natural or juridical persons of the eight States mentioned in paragraph 1 (*a*) (ii) when some of those States, or even only one of them, had signed the convention. That clearly discriminated against the States listed in paragraph 1 (*a*) (*i*).

10. His delegation associated itself with the reservation made by the USSR delegation in its letter of 22 April 1982; it was unjust that private companies possessing the nationality of certain Western States should be put on the same footing as States with regard to the granting of pioneer investor status.

11. As Chairman of the group of Eastern European (socialist) States, his delegation expressed the hope that the discriminatory provisions contained in the draft resolution in annex IV of the report would be eliminated so that the draft resolution could be adopted by consensus.

12. Mr. MONNIER (Switzerland) said that draft resolution II on preparatory investment contained in annex IV to document A/CONF.62/L.132 was the product of intensive and difficult negotiations among the delegations most directly concerned. It would be regrettable if the opposition of one delegation should lead to a breakdown of the agreement on the subject, all the more so in that the alleged discrimination had no substantive consequences. While it was true that the entities referred to in paragraph 1 (*a*) (ii) might become pioneer investors from the date on which one of the States controlling the persons constituting those entities had signed the convention, every one of the applications for registration as a pioneer investor would have to relate to only one mine site, and subsequent approval of plans of work would be subject to the condition that all the States in question were parties to the convention.

13. The provision of paragraph 1 (*a*) (iii) of draft resolution II took account of investments to be made by 1 January 1985. While it was fair that the developing States and their public and private enterprises should be able to become pioneer investors when they satisfied the conditions laid down, there was no reason in principle to confine that opportunity to developing countries and their enterprises; a provision of that kind represented a discriminatory restriction.

14. With regard to the proposals in annex V of the report of the President, the new wording of article 155, paragraph 3, was an improvement, and the amendment to article 161 took account of the wishes of one delegation whose concern to be represented in the Council had never been justified in the minds of many delegations. It was regrettable that the President of the Conference had not found it possible to accept the proposal made with regard to the composition of the Council by various medium-sized industrialized countries or the proposal on that subject made by the group of 11 countries, which set the number of members of the group of Western European and other States in the Council at nine (A/CONF.62/L.104).

15. His delegation greatly desired other improvements to Part XI to be made by consensus, particularly with regard to the transfer of technology, and, with the reservations it had expressed, it supported the President's proposals.

16. Mr. DANELIUS (Sweden), speaking on behalf of the delegations of Denmark, Finland, Iceland, Norway and Sweden, said that the report of the President in document A/CONF.62/L.132 and its annexes enjoyed the full support of the Nordic delegations. The texts contained in the annexes were improvements which should bring the Conference closer to consensus. The draft resolution on preparatory investment protection was an important new text which should be regarded as part of the package deal that was being sought.

17. The delegations for which he was speaking had noted with satisfaction the proposals in annex V, based as they were on the amendments proposed in document A/CONF.62/L.104 by the group of 11 countries, which included all the Nordic countries. Nevertheless, they felt that further inspiration could be drawn from the proposals of the group of 11 States with a view to achieving a generally acceptable text.

18. Mr. MAHIOU (Algeria) said that annex I of document A/CONF.62/L.132 took account of the support of the Conference for the amendment contained in document A/CONF.62/L.101, on the participation of national liberation movements.

19. His delegation, in a spirit of conciliation, accepted the provisions of annex II, but with some disquiet; its disquiet arose from the ambiguity of the provision on the participation of international organizations not all of whose members were parties to the convention.

20. Annex IV, concerning the draft resolution on preparatory investment, caused his delegation serious concern because of certain provisions which could lead to the collapse of the parallel system. The provisions relating to the size of a pioneer Area, to the number of mine sites reserved for the Enterprise and to the very concept of a pioneer investor made the draft resolution controversial. The size of the pioneer Area was excessive, even if provision was made for a process of reversion, increasing gradually to 50 per cent of the mine site. It was still possible to give assurances to land-based producers and to avoid establishing a monopoly over the sea-bed.

21. The provision contained in paragraph 1 (*a*) (ii) opened up the possibility that a State which was not a party to the convention could engage in sea-bed activities through consortiums of doubtful nationality. That provision might also encourage some States to take a wait-and-see attitude with regard to acceptance of the convention.

22. Where annex V was concerned, his delegation supported the comments made by the Peruvian delegation on behalf of the Group of 77 and wished to point out that the modifications contained in that annex were acceptable only as part of a comprehensive final agreement leading to the adoption of the draft convention by consensus.

23. Mr. PERIŠIĆ (Yugoslavia) said that draft resolution II on preparatory investment contained in annex IV of the President's report (A/CONF.62/L.132) constituted a unilateral concession by the developing countries faced with the realities of existing activities in the international Area and the intention to conclude a "mini-treaty". It was not possible to achieve a balance on a *quid pro quo* basis, but a more satisfactory solution could be arrived at if some of the changes proposed by the Group of 77 were accepted.

24. He reiterated his delegation's support for the other proposals contained in document A/CONF.62/L.132, in keeping with the position of the Group of 77 but subject to the amendments proposed by the Group in document A/CONF.62/L.116. In the first place, two provisions of annex IV in the report which were of particular concern to the developing countries had not been amended. With regard to the size of the pioneer area, 150,000 km^2 was too large, by any geological, scientific or commercial criterion, for exploratory activities on the sea-bed. The proposed relinquishment clause was aimed at mitigating the effects by reducing the size of the pioneer Area so as not to affect the part to which the Enterprise would be entitled. In the view of his delegation, a simpler solution would be to reduce the size of the Area from the beginning.

25. Secondly, maintenance of the provisions of paragraph 9 (*a*) and (*b*) would jeopardize both the philosophy and the substance of the parallel system. Acceptance of resolution II, concerning preparatory investment, presupposed that the substantive solutions agreed upon in the draft convention, particularly the provisions on production limitation, transfer of technology, composition of and decision-making in the Council, the Review Conference, the powers of the main organs of the Authority and the general resource policy in the Area, could not be reopened or renegotiated.

26. Where the changes proposed in annex V in document A/CONF.62/L.132 were concerned, Yugoslavia continued to support the position of the Group of 77. In brief, his delegation supported the modifications proposed in annexes I and III of the report submitted by the President. It considered that the deletion of article 4, paragraph 6, of annex IX proposed in annex II was a substantial change; however, that objection would not prevent it from joining the consensus on the convention and its annexes.

27. Mr. HAYES (Ireland) said that his delegation fully endorsed the finding in document A/CONF.62/L.132, paragraph 9, with regard to the formal amendment submitted by the delegation of Belgium, as reproduced in annex II in document A/CONF.62/L.132, and was confident that that amendment and others referred to in paragraphs 9 and 14 of the report would be incorporated in the draft convention by consensus. It welcomed the indications of willingness to accept at least some of those amendments in the interests of achieving consensus on the future convention. It fervently hoped that the consultations still proceeding on those and related matters concerning the international sea-bed régime would result in general agreement.

28. Mr. ZEGERS (Chile) said that his delegation fully supported the position stated by the Chairman of the Group of 77 at the preceding meeting. With regard to the proposals contained in document A/CONF.62/L.132, he said that the preparatory investment programme had retained the main criterion that the programme should be compatible with the convention, the conclusive example being the requirement for a firm commitment on the part of pioneer investors through registration and submission of a plan of work for exploitation. In addition, the principle of production limitation, an expression of the common heritage of mankind, had been fully accepted and the formula in article 151, paragraph 2, had been applied without any restrictions or alternatives. At the same time, the proposed programme met the wish of the industrialized countries to be able to begin exploratory activities in the international Area before the entry into force of the convention, in accordance with the need to eliminate the uncertainty that would prevent investment, without contravening the convention or the principle of the common heritage of mankind. He therefore hoped that such a major concession by the Group of 77 would be conducive to the consensus that was necessary for the adoption of a convention of a universal character.

29. Lastly, he noted that the unilateral legislation recently adopted by the Soviet Union concerning the sea-bed beyond the limits of national jurisdiction had, like similar legislation adopted by other States in the past, been the subject of political condemnation by the Group of 77 and of a declaration that it had no legal validity whatever because it contravened the principle of the common heritage of mankind.

30. Mr. MOMTAZ (Iran) said that his delegation was prepared to accept annex I in document A/CONF.62/L.132, concerning the participation of national liberation movements in the convention. Only the full participation of national liberation movements, such as the Palestine Liberation Organization, recognized by regional organizations and by the United Nations could safeguard their legitimate interests.

31. With regard to the draft resolution contained in annex IV, he noted that most of the texts submitted at the current session had the drawback of emphasizing the protection of preparatory investment at the expense of the international community's interests in the common heritage of mankind. The President's report was open to the same criticism, since it unduly increased the number of "pioneer investors", who would be the future competitors of the Enterprise, and barred the way to the development of the parallel system that was the very foundation of the régime for exploitation of the common heritage. Where the definition of a pioneer investor was concerned, he felt that the President's proposal, by expressly listing in paragraph 1 (*a*) and (*b*) the States which would have that status, ensured that they would be recognized as such. That list would become to some extent a source of law, inasmuch as the Preparatory Commission would, in accordance with paragraph 2 of the draft resolution, register almost automatically any entity that applied for registration as a pioneer investor. The requirements laid down in that paragraph consisted mainly of a statement, by the State designated in paragraph 1, certifying the level of expenditure made by that State or any of its entities. Those misgivings were even more justified in view of the fact that the approval of plans of work by the Authority, as provided for in paragraph 8 (*a*), was not subject to adequate safeguards. It seemed to his delegation that, under the terms of paragraph 8, the functions of the Authority with respect to the approval of plans of work were not discretionary but mandatory.

32. Although he approved of the inclusion in paragraph 1 of a formula in favour of developing countries, he pointed out that that formula might ultimately benefit certain entities of developing countries wishing to begin exploitation of the sea-bed, since there was a risk that the status of pioneer investor might be granted with the concurrence of some developing countries and at the expense of the Enterprise. In order to prevent possible abuses, the provisions of paragraph 10 must be strengthened so that the Preparatory Committee could satisfy itself that States Parties to the convention did have effective control over entities possessing their nationality. Secondly, the proposals contained in the report would have a serious impact on the parallel system and might in fact ham-

string it for the entire period before the Review Conference. The 11 States listed in paragraph 1 (*a*) and (*b*) would in practice be assured of access to some 2 million km^2 of the richest part of the international Area, which from the very moment of the entry into force of the convention would be closed to the Enterprise. It had been argued that the reversion clause reduced the drawbacks of the excessive size of the "pioneer Area", but that was by no means certain, since the entity engaged in exploitation might relinquish those portions of the Area which exploratory operations showed to be least promising. Unfortunately, the Enterprise would be excluded not only during the exploration phase, since paragraph 9 (*a*) suspended priority for the Enterprise with regard to the issue of production authorizations until the pioneer investors had obtained production authorization for their first mine site. Despite the exception provided for in paragraph 9 (*b*) of the draft resolution, paragraph 9 (*a*) entailed a serious risk of imbalance, to the detriment of the Enterprise in terms of the number of mine sites it could obtain in the first years of the production. His delegation could not agree to such discrimination, which cast doubt on the workings of the parallel system that it had accepted as a provisional compromise. The provisional régime proposed in the President's report for preparatory investment would postpone for a long time the establishment of the unitary system which had been and continued to be the ultimate objective for his delegation.

33. Instead of ensuring the establishment of the parallel system, the adoption of the system of preparatory investments could lead to an apportionment of the richest areas of the oceans among entities belonging to a handful of States. That was all the more serious as nothing would be given in return for privileges granted; the proposal in paragraph 1 (*a*) (ii) merely obliged States certifying certain entities to sign the convention.

34. Mr. SHEN Weiliang (China) said that, while the report contained in document A/CONF.62/L.132 was basically acceptable, his delegation wished to make a few comments regarding draft resolution II, contained in annex IV. At the 173rd meeting, held on 17 April, his delegation had stated that objective criteria should be prescribed for pioneer investors and that no names of pioneer States or other entities should be listed. In draft resolution II, the President of the Conference not only had laid down objective criteria, but had listed some names of pioneer investors, without including China. His delegation wished to reiterate the statement made at the aforementioned meeting. The letter dated 19 April from the Chairman of his delegation addressed to the President of the Conference referred to the surveying activities conducted by China in the Pacific Ocean. In the light of the criteria of draft resolution II, China had already met the requirements for pioneer investors. Under paragraph 1 (*a*) (i) of the draft resolution, some natural or juridical persons could enjoy the rights of pioneer investors, even if the countries of which they possessed the nationality were not signatories to the convention. That was unreasonable. The pioneer Area referred to in paragraph 1 (*e*) of the draft resolution was too large and should be reduced to a reasonable level.

35. Mr. PRANDLER (Hungary) said that, while his delegation had no difficulty in accepting the recommendations contained in the annexes to the President's report, its acceptance did not mean that it was completely satisfied with everything included in those proposals.

36. With respect to draft resolution II, contained in annex IV, his delegation wished to place on record its disagreement with paragraph 1 (*a*), which defined the concept of "pioneer investor". That paragraph contained an element of political and juridical discrimination concerning the participation of States in pioneer activities. The supporters of the paragraph had argued that, under paragraph 8 (*c*), no exploitation activities could be carried out unless the States referred to in paragraph 1 (*a*) (ii) became parties to the convention. It was undeniable, however, that paragraph 1 made a clear-cut distinction between those States which had to sign the convention if they wished to conduct exploratory activities and those consortia which might start those activities and which might claim to be protected by the terms of the resolution, although it was not necessary for all the States concerned to sign the convention.

37. Mr. JUNG (Federal Republic of Germany) said that his delegation accepted the provisions concerning participation contained in annexes I and II to document A/CONF.62/L.132. While the other proposals submitted by the President of the Conference did not accommodate his delegation's concerns, they were a step towards consensus. That was particularly true of the compromise solution incorporated in annex IV. However, the resolution contained in that annex imposed an extremely heavy burden on pioneer investors, and that could have unforeseeable implications.

38. Any solution to the problem of pioneer investors would require a more satisfactory elaboration of Part XI of the convention. The President's report offered no solution in that respect. It was therefore necessary for negotiations to continue with a view to the adoption of a formulation of Part XI that might find universal acceptance.

39. Mr. LUPINACCI (Uruguay) said that his delegation supported the amendments to articles 150, 155 and 161 of the draft convention, as well as the new text of draft resolution II, contained in document A/CONF.62/L.132. It understood that they did not affect the régime for the international seabed Area, that they afforded reasonable solutions and that they offered prospects for a consensus.

40. In annex V of the report of the President, the new subparagraph (*a*) of article 150 would ensure that the resources of the Area were developed in accordance with the objectives laid down in that article, without affecting the balance of the article. The amendment to article 155, paragraph 3, could facilitate the work of the Review Conference, in the light of the experience of the Third United Nations Conference on the Law of the Sea. In the new wording of article 161, the reference to the largest consumer made the provision more explicit and reflected a reasonable approach.

41. With respect to draft resolution II concerning preparatory investments, in annex IV of the report, it was necessary to strike a balance between the actual and the ideal administration of the common heritage of mankind. It should be borne in mind that the aim was to construct a set of provisions which were essentially of a transitional nature, so that flexible formulas could be used pending the establishment of a definitive régime. However, the wording of the final sentence of paragraph 9 (*a*) of the draft resolution should be amended in order to give a better reflection of the essence of the parallel system. At the very least, it was important to eliminate the rigid condition of precedence for pioneer investors with regard to priority for the Enterprise, in accordance with article 7, paragraph 6, of annex III to the convention, pending a formulation that would offer the best prospects for consensus.

42. Similarly, further consultations should be held on the question of the limit of the size of the "pioneer Area", with a view to eliminating the objection on the part of some delegations, which considered the limit too high. He recognized, however, that that concern had to some extent been met, since portions of the pioneer Area would revert to the international Area. One of the positive aspects of draft resolution II was the provision that no plan of work for exploration and exploitation would be approved unless the certifying State was a party to the convention. That was a very important safeguard.

43. The adoption of the convention by consensus would mark a significant step towards international understanding,

the stabilization of relations among States, the consolidation of international law and the maintenance of peace.

44. Mr. MALONE (United States of America) said that, in certain important areas, the recommendations made by the President of the Conference in document A/CONF.62/L.132 represented a step forward in the work of the Conference. In a number of other areas, however, those recommendations were not sufficient. His delegation was therefore urgently participating in continuing consultations in the search for a convention that would be acceptable to all.

45. Mr. VARVESI (Italy) said that while the proposals contained in document A/CONF.62/L.132 were undoubtedly helpful, they should not be regarded as definitive solutions. Some of those proposals were acceptable; others were not. It was to be hoped, however, that, before the end of the session, the Conference would arrive at a text that was acceptable to all participating States, with special reference to Part XI and the draft resolution on preparatory investments.

46. Mr. CHAYET (France) said that the President's report (A/CONF.62/L.132) marked a major step towards the adoption of the convention by consensus. As far as the report was concerned, the provision regarding the conditions under which the European Economic Community could become a party to the convention was acceptable. Although draft resolution II, contained in annex IV to that document, did not fully reflect his delegation's views, it did represent a good compromise formula for consensus. His delegation therefore supported the draft resolution. It was essential to continue efforts to improve the text of the draft convention until it was made acceptable to all.

47. Mrs. DEVER (Belgium) welcomed the conclusions contained in paragraph 9 of the President's report concerning the amendment submitted by Belgium in document A/CONF.62/L.119, which would be incorporated by general agreement in the convention. As to the questions relating to the system of exploration and exploitation of marine mineral resources and the protection of preparatory investments, the proposals, while useful, still fell short of meeting the concerns she had voiced at the 171st meeting, on 16 April. Although draft resolution II, concerning the protection of preparatory investments, contained a number of positive elements, her country's essential interests were still not protected by the provisions of the text, especially the requirement that a State would have to be a party to the convention before it could enjoy the guarantees provided under the draft resolution.

48. Her delegation supported the amendment to article 150 proposed by the President in annex V to his report: the development of the resources of the Area should be the first objective set forth in that article. Belgium could not, however, support the proposal concerning article 161, according to which the order of subparagraphs (*a*) and (*b*) of paragraph 1 would be reversed. With respect to Part XI, she supported, as in the case of preparatory investments, the previous speakers who had called for an attempt to reconcile positions, with a view to attaining a convention that would be acceptable to all.

49. Mr. TORRAS de la LUZ (Cuba) said that, although there had been concessions by all groups of countries in connection with the draft convention, the largest ones, both quantitatively and qualitatively, had been made by the Group of 77, especially in accepting the parallel system of exploitation, thus sacrificing the unitary system which could ensure that the resources of the sea-bed beyond the limits of national jurisdiction would be entirely the common heritage of mankind. The Group of 77 had even agreed to preparatory investment protection, which was a distortion, however temporary, of the parallel system, in order to ensure universal acceptance of the convention.

50. With regard to the proposals made by the President in document A/CONF.62/L.132, his delegation supported the position of the Group of 77 on those proposals, as stated by its Chairman. It also considered it proper that the draft resolution concerning preparatory investment should treat all States on an equal footing.

51. As to the objections raised by the representative of Israel with respect to document A/CONF.62/L.132, paragraph 9, he pointed out that the Group of 77 had demanded the participation of national liberation movements as full parties to the convention and that the amendment submitted by Iraq in document A/CONF.62/L.101, referred to in paragraph 9, was a compromise solution.

52. Mr. PASHKEVICH (Byelorussian Soviet Socialist Republic) said that he had no difficulty in supporting the President's proposals (A/CONF.62/L.132), with the sole exception of draft resolution II contained in annex IV. Since the draft convention and its annexes already provided adequate safeguards for so-called pioneer investors, there was no need to draw up a separate instrument governing the preparatory investment régime. The document relating to the legal status of pioneer investors should accord entirely with the provisions of the convention and its annexes and should not admit of any legal possibility whatever of disregarding the provisions of the convention on the régime for exploitation of the mineral resources of the sea-bed in the international Area, which was considered to be the common heritage of mankind.

53. Paragraph 1 (*a*) of the draft resolution left a legal loophole for multinational consortia to engage in exploitation of the mineral resources of the international Area, even if not all the States whose national companies were members of the consortia accepted the convention. That gave the impression that a way was being left open for those States not to become parties to the convention, an eventuality which would jeopardize the establishment of the Authority and the financing of its activities. Furthermore, the fact that the provision made it obligatory for some States to sign the convention in order to enjoy protection of their preparatory investment while no such requirement was imposed on other States was a clear case of discrimination. The draft resolution also set a dangerous precedent, in that an international conference of the United Nations would be granting a specific international legal status not only to States but to certain private enterprises. For all those reasons, his delegation could not accept draft resolution II. However, it hoped that the consultations on that resolution to be conducted by the President of the Conference would lead to a generally acceptable compromise solution regarding the provisions in question.

54. Mrs. TNANI (Tunisia) said that her delegation supported annexes I and II in document A/CONF.62/L.132 because, in its view, they improved considerably on the contents of document A/CONF.62/L.94. The Conference should allow the national liberation movements taking part in its work to sign the final act and to express their views freely on that occasion. Her delegation also agreed with the provisions of annex III, which constituted an improvement in accordance with the suggestions made by the Group of 77. With respect to annex IV, concerning preparatory investment, her delegation reaffirmed its support for the position of the Group of 77, which did not reject the basic ideas of the draft resolution.

55. Where annex V was concerned, her delegation shared the views of the Group of 77, especially with regard to the rejection of any amendment that might upset the balance of Part XI, on the fundamental elements of which general agreement had been reached after long and difficult negotiations. However, both the amendments in annex V and the rest of the amendments proposed by the President were part of a comprehensive solution, the aim of which was to ensure the consensus which would enable the draft convention and the four resolutions to be adopted. If that were achieved, it would

set a precedent the effect of which could only be beneficial for universal understanding and co-operation.

56. Mr. PINTO (Portugal) said that the provision of social safeguards for those working in the international Area should be a basic objective of the Conference. To leave the responsibility for such social measures in the hands of the Authority or Enterprise would be contrary to international labour law and to fundamental principles in the field of human rights. With respect to the proposals in document A/CONF.62/L.132, his delegation was of the view that the new subparagraph (*f*) of article 171 proposed in annex III would mean an increase in his country's financial contribution without its receiving anything in return. Draft resolution II also discriminated against countries like Portugal which, although developed, were not highly industrialized. That was contrary to the principle of the common heritage of mankind laid down in the convention and the principle of equality of States enunciated in the United Nations Charter.

57. Although his delegation accepted annex V, it wished to point out that the proposed amendment to article 161 did not take account of the interests of countries at a low or medium level of industrialization.

58. In any event, his delegation would not oppose that annex or the other annexes in the document if the Authority, on the recommendation of the Preparatory Commission, gave consideration to the situation of the countries now discriminated against and applied paragraphs 2 (*b*) and 4 of article 161, so as to rectify the present injustice. Paragraph 1 (*a*) (iii) of annex IV could also be applied if only the words "any developing State" were replaced by "any other State".

59. Mr. KOFFI (Ivory Coast) endorsed the comments made by the representative of Peru on behalf of the Group of 77 and by the representative of Sierra Leone on behalf of the group of African States. He had no difficulty in accepting annexes I, II, III and V in document A/CONF.62/L.132. However, with respect to annex IV, he considered questionable the principle of preparatory investment protection embodied in draft resolution II. The investors seeking legitimization of their activities in the Area, which was the common heritage of mankind, had not waited for the approval of the international community before embarking on prospecting and exploration of the sea-bed; now they were looking for support in a convention the scope of which they wanted to restrict. In his delegation's view that was a paradoxical situation. However, for the sake of avoiding a deadlock in the work of the Conference, his delegation agreed to safeguards for preparatory investment.

60. The draft resolution in question was very unbalanced; it differed considerably from the earlier draft and buttressed the rights of private entities and of a few countries at the expense of the Authority, which ended up with duties and obligations but very few rights. It contained provisions (paras. 1 (*e*) and 9 (*a*)) which at some future time might seriously limit the rights of the Authority or the Enterprise, especially in terms of effective implementation by the Enterprise of the parallel system, because of the large number of sites allocated to pioneer investors and the unjustifiable size of those sites.

61. Mr. MUDHO (Kenya) said that his delegation could accept most of the recommendations in document A/CONF.62/L.132, particularly the text in annex I concerning the participation of national liberation movements, although it would prefer stronger provisions than those appearing in the annex. It had no objection to the deletion of paragraph 6 of annex IX, concerning the participation of international organizations.

62. The effects of ocean-floor mining on land-based producers were disturbing to African delegations, including that of Kenya, which therefore welcomed the recommendations in annex III.

63. In a spirit of conciliation, his delegation also supported the recommendation in annex V that article 150 should be amended through the insertion of a new subparagraph after subparagraph (*a*). In the same spirit, it accepted the proposal concerning article 155, paragraph 3, although it feared that the procedure referred to would have a delaying effect. It had no objection to the text designed to ensure a permanent seat on the Council for the largest consumer of resources of the sea-bed and the ocean floor, in view of the fact that a change in the identity of that consumer was not inconceivable.

64. With regard to the recommendations in annex IV, and in particular the changes in the text of the draft resolution on preparatory investment, he said that designating certain countries and, what was even worse, private entities, as was done in paragraph 1 (*a*) (i) and (ii), set a bad precedent. He also had objections to paragraph (*e*), concerning the size of the pioneer Area, which should be reduced along the lines suggested by the Group of 77. Article 9 of the draft resolution would delay the operation of the parallel system, and his delegation therefore hoped that the informal consultations would result in a new formula permitting continuation of the parallel system as originally envisaged. Lastly, he supported the recommendations in document A/CONF.62/L.132 as a whole, in the interests of compromise.

65. Mr. KALONJI TSHIKALA (Zaire) said that his delegation was generally satisfied with the report of the President in document A/CONF.62/L.132 and its annexes.

66. With regard to annex I, his delegation welcomed the compromise reached on the participation of national liberation movements, although it had wanted those movements to participate fully in the convention as representatives of their peoples. In spite of the shortcomings of annex III, his delegation agreed to the proposals contained in it and was pleased that the convention made provision for the principle of a compensation fund and that it would devote special attention to the specific problems of the developing land-based producers.

67. Annex IV, although acceptable on the whole, presented some problems both for his delegation and for the other members of the Group of 77. Firstly, where the pioneer area was concerned, even though production activities were not involved and the size of the area of exploitation would not exceed the limits decided upon by the Authority in its rules and regulations, an area of 150,000 km^2 was too large. It was not technically justified, since estimates made by the United States and the United Kingdom had established that 40,000 km^2 was sufficient and Japan had stated that 60,000 km^2, or even less, would be satisfactory. The fact was that, despite the requirements for reversion to the Area, more than 50 per cent might still be left at the end of eight years' prejudged production, unless the Area was claimed by pioneer investors for purposes of speculation. Certainly, at the production stage the size of the Area would at best be reduced to conform to the production ceiling established in article 151. Those fears were due precisely to the fact that article 151, paragraph 2 (*b*), did not protect land-based mining industries from competition by minerals extracted from the Area.

68. With respect to paragraph 9 (*a*) of draft resolution II contained in annex IV to the report, it must be pointed out that that provision would for a time reverse the parallel system which had cost so much effort. It had been said that, after the first stage, the system would operate as envisaged. However, it was difficult to foresee when the first stage would end and, above all, whether there would be any resources left to exploit when the second stage was reached.

69. The Enterprise, if it came into operation, would have certain advantages: the exploration would have been done and the financing and technology provided by the pioneer investors. Nevertheless, it was necessary to proceed cau-

tiously, because those positive factors could also affect its autonomy.

70. Lastly, in view of the depressed short-term and long-term market for minerals, one might wonder whether the Enterprise, which lacked the relevant experience and background, would be able to find outlets for its production, in view of the surplus predicted in document A/CONF.62/L.84, concerning the production ceilings established in article 151.

71. The allocation of too large an area might render ineffective any planning of the kind provided for in article 150, subparagraphs (*a*), (*d*), (*e*) and (*g*), and by implication in article 151, paragraph 2 (*f*). The principle of planning derived from the need to develop the Area's resources systematically while preventing waste and to supplement the supply of minerals from the sea-bed with minerals mined on land, as well as the need to protect the developing States against the harm which exploitation of the mineral resources of the sea-bed would do to their economies.

72. The provisions of paragraph 5 (*i*) of the draft resolution concerning the Preparatory Commission (A/CONF.62/L.94), to the effect that studies should be undertaken on the problems which would be encountered by developing land-based producers of the same minerals that would be extracted from the Area and on the establishment of a compensation fund and a special sub-commission for those purposes, might come to nought if everything was assigned from the outset to preparatory activities. The cobalt and manganese industries would have to close their plants, for it had been determined that those industries would suffer from over-production once the mining of cobalt and manganese from the sea-bed started. The protection of preparatory investment, although legitimate in itself, should not be at the expense of the more substantial and essential investments which land-based producers or potential producers in developing countries had been making for a long time.

73. With regard to annex V, his delegation did not agree with the proposed modifications to Part XI, and in particular to article 150, since they threatened to aggravate the imbalance between the arguments in favour of production advanced by the industrialized countries and legitimate concerns for the protection and regulation of the common heritage of mankind. While his delegation would not oppose the amendment to article 161, it considered it unnecessary. On the other hand, it was opposed to the idea of granting a permanent seat to the State which was the largest land-based producer of minerals.

74. Mr. ABDUL RAHMAN (Observer, Palestine Liberation Organization), speaking under rule 63 of the rules of procedure of the Conference, said that the arrogant manner in which the representative of the Zionist entity had acted at the preceding meeting of the Conference obliged him to reply and to inform the world that the so-called State of Israel was nothing more than a collection of settlers of various nationalities, 65 per cent of whom had not even been born on Palestinian soil. In view of the desire of the Palestinian people for a compromise solution which would permit the adoption of the convention on the law of the sea by consensus, the Palestine Liberation Organization accepted the proposals of the President of the Conference in document A/CONF.62/L.132.

75. Mr. AL-HAMADI (United Arab Emirates), speaking in exercise of the right of reply on behalf of the group of Arab States, said that the group had shown great flexibility on some questions for which it would have liked more equitable and just solutions to be found. It accordingly accepted the formula proposed by the President for the participation of national liberation movements, as conforming at least minimally to its wishes. It thus associated itself with the position of the Group of 77 by joining in the comprehensive agreement.

The meeting rose at 6.05 p.m.

179th meeting

Thursday, 29 April 1982, at 10.50 a.m.

President: Mr. KALONJI TSHIKALA (Zaire)

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

STATEMENTS ON THE REPORT OF THE PRESIDENT IN ACCORDANCE WITH RULE 37 OF THE RULES OF PROCEDURE (*concluded*)

1. Mr. AL BAHARNA (Bahrain) expressed appreciation to the President and the members of the Collegium for their efforts to achieve compromises and thus facilitate the adoption of the convention by consensus. The President's report (A/CONF.62/L.132) contained a number of compromise solutions and he hoped the amendments proposed in it would be incorporated in the draft convention.

2. He accepted draft resolution IV (A/CONF.62/L.132, annex I), which proposed that representatives of national liberation movements should sign the final act as observers. The proposal did not go as far as he would have wished, but it was an acceptable compromise.

3. The amendments to article 21 mentioned in paragraph 28 of the President's report had been withdrawn by the sponsors in a spirit of compromise; but he was satisfied that articles 19 and 25 of the convention gave adequate protection for coastal States as regards navigation in the territorial sea.

4. Mr. NANDAN (Fiji) associated his delegation with the general statement made by the representative of Peru on behalf of the Group of 77 (177th meeting).

5. In general, the President's report met the minimum needs of those delegations which had sought changes in Part XI and the preparatory investment protection provisions, bearing in mind that during the long negotiations no delegation had got all it wanted, and that there must be give and take in reconciling the interests of the developing States and the industrialized countries. He hoped that during the short time remaining the President could propose further improvements to the text, so that it would have every chance of adoption without a vote.

6. Mr. FRANCIS (New Zealand) said that the proposals in the President's report were a substantial step towards general agreement. There was still no consensus regarding the texts which would govern deep sea-bed mining, but he nevertheless believed that annex IV to the report was a remarkable achievement. The industrialized countries had sought a régime that would enable pioneer investors to proceed with exploration on a sound financial basis in the interim period